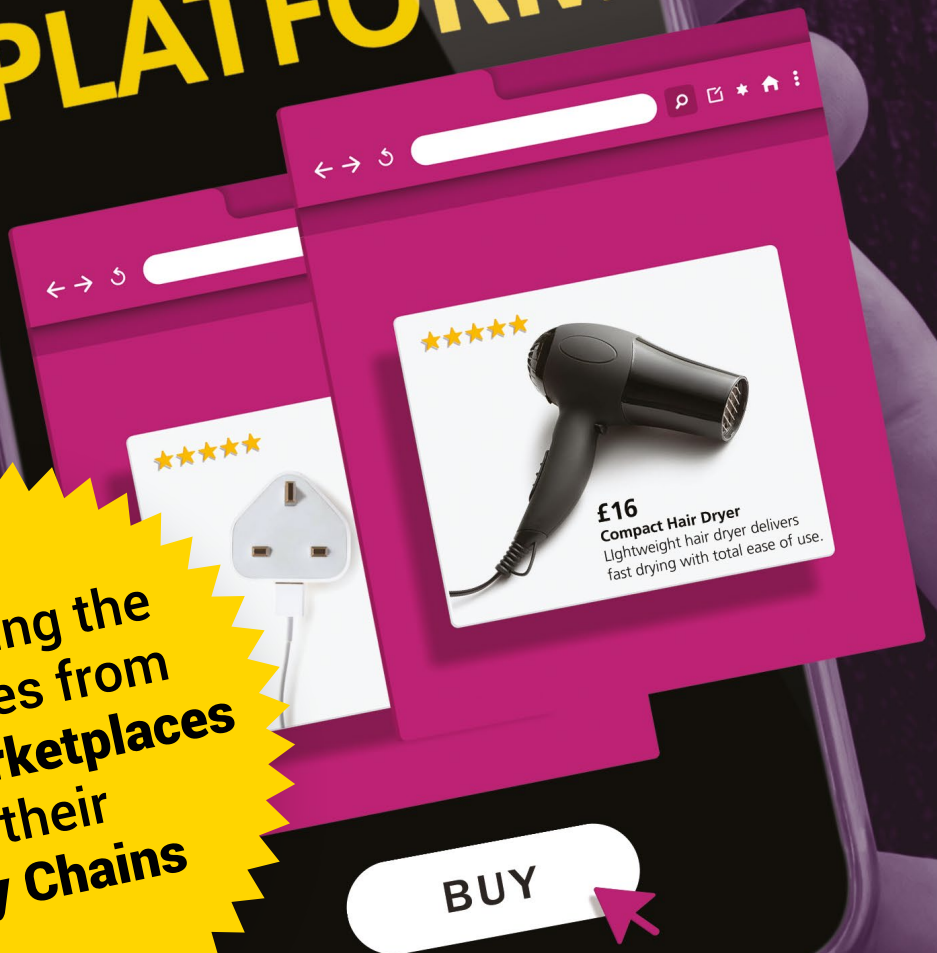


MIND THE GAP

**BETWEEN
THE CHAIN
AND THE
PLATFORM**

**Confronting the
challenges from
Online Marketplaces
and their
Supply Chains**



This report by the Chartered Trading Standards Institute is based on the witness evidence sessions conducted by the All-Party Parliamentary Group (APPG) on Consumer Protection held from 22 May to 3 July 2023, written evidence submitted by witnesses and additional research by the APPG secretariat, CTSI. All-Party Parliamentary Groups are informal groups of Members of both Houses with a common interest in particular issues. This is not an official publication of the House of Commons or the House of Lords.

CONTENTS

Acknowledgements	04
Executive Summary	06
1. Challenges Posed by Online Marketplaces and Platforms	09
2. The Supply Chain at our Ports and Borders	17
3. Lessons from Other Countries	21
4. Our Recommendations	28
Figures Index	29
References	29

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Advertising Standards Authority
Amazon
British Toy and Hobby Association
CTSI Lead Officer, E-Commerce
Electrical Safety First
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Intellectual Property Office
London Chambers of Commerce
RoSPA
Suffolk Trading Standards Imports Team
Which?

Special thanks to Maddie Ludlow



About the All-Party Parliamentary Group on Consumer Protection

The APPG on Consumer Protection helps to drive important conversations, political engagement and facilitate cross-party debates on a range of issues, and to raise awareness of the important role Trading Standards plays in the consumer protection system. At the time of the evidence gathering the Group was Chaired by Yvonne Fovargue MP. CTSI provides the secretariat for the Group.

In 2023, the APPG conducted a national inquiry into the operation of online marketplaces by holding a number of roundtable discussions with experts drawn from national regulators, Local Authority Trading Standards services, businesses, industry associations and other interested parties.

The Group explored the role of online marketplaces, other online platforms and their supply chains due to the increasing number of counterfeit and unsafe products supplied in the UK. The aim of the inquiry was to understand what can be done to improve how this market operates.

This report by the Chartered Trading Standards Institute is a culmination of these roundtable evidence sessions held by the APPG, reports from stakeholders and research undertaken by the secretariat. It contains recommendations arising from these discussions from regulatory and industry stakeholders.

Foreword

Britain is at the forefront of embracing new innovations, such as online marketplaces and other online platforms which support small and medium sized businesses to trade. However, counterfeit goods and unsafe products, such as e-scooters and mobile phone chargers, are increasingly being imported and sold through these routes.

This report is the result of much hard work by the All-Party Parliamentary Group on Consumer Protection. The contents are based on our evidence sessions and discussions with businesses and regulatory stakeholders. The purpose of this report links to the APPG's core aim of supporting the Government's work on improving consumer protection and supporting businesses to innovate and compete in a rapidly changing trading environment with changing consumer shopping habits.

John Herriman, Chief Executive, CTSI

“
...the increasing number of counterfeit and unsafe products supplied in the UK means there is a need to understand what can be done to improve how this market operates.”

State of Play of Online Marketplaces

- Around one third of UK retail sales are now conducted online,¹ but our product safety legislation has not kept pace with changes in shopping habits, in particular the development of online marketplaces and other platforms. Online platforms may sell goods themselves and/or provide a platform for third-party sellers (in the UK or abroad), including consumers, to sell goods.
- There has been growing concern about the safety of some products sold through online marketplaces. Cheap, counterfeit goods and dangerous products, such as e-scooters and mobile phone chargers, and grey market food products, are increasingly being imported and sold through online marketplaces.
- In 2019, the Organisation for Economic Co-operation and Development (OECD), estimated that the global trade in fake goods is worth as much as \$464 billion USD, which amounts to 2.5% of world trade. In 2016, the OECD also estimated that imports of counterfeit or pirated goods into the UK accounted for £13.6 billion, which is 3% of all UK imports. Moreover, it is estimated that the sale of counterfeit goods costs the UK Exchequer £1.3 billion.
- In 2022/2023, Suffolk Trading Standards Imports Team found that 49% of consignments examined at the port of Felixstowe contained unsafe products and were refused entry, including toys, nursery goods, electrical goods and e-scooters. In total 135,000 unsafe products across 405 product lines and 189,000 non-compliant goods across 311 product lines were detected by the Suffolk Imports Team. The team has not only saved lives, but also saved the UK economy an estimated £12.8 million a year.
- The cost-of-living crisis means consumers are attracted to cheap online offers, hoping to get a bargain, but this leaves them susceptible to buying counterfeit and unsafe goods. However, it can be difficult for the public to distinguish between genuine and counterfeit products, identify safe products and establish whether they are purchasing from a legitimate business or not.²
- In this report we look at how we need to respond to the challenges posed by online marketplaces, other platforms, and the supply chain; what lessons we can learn from other countries and how we can support regulators to tackle enforcement challenges.

¹All-Party Parliamentary Group (APPG) for Consumer Protection, House of Commons Committee of Public Accounts - Protecting consumers from unsafe products, House of Commons, 16 September 2021, <https://committees.parliament.uk/publications/7451/documents/78000/default/>

²Witness evidence

Financial Support for Future Enforcement of Online Marketplaces

- Given their size and influence, online marketplaces should have the resources and technological capability to effectively regulate their own sites, but lack sufficient incentives to do so due to the lack of clarity in the legislation.
- Targeted ring-fenced investment is required to fund and support ongoing and future regulation of such marketplaces and platforms by Local Authority Trading Standards services. The APPG supports a levy on online marketplaces and other online platforms or a windfall tax or additional tax revenue to pay for it, or a combination of these taxes.

The team has not only saved lives, but also saved the UK economy an estimated £12.8 million a year.

Clarifying the Legal Responsibilities of Online Marketplaces

- Outdated product safety legislation means some online marketplaces and other platforms have argued that they have no legal obligation to ensure products supplied by third-party sellers through their platforms comply with legal requirements and are safe.
- Clear legal duties should be placed on online platforms and other platforms in line with those set out in the Online Safety Act 2023. Online marketplaces and other platforms need to be regulated in a way which continues to support business innovation.
- A number of countries, in particular the EU including the EEA, have updated their legislation, through the EU Market Surveillance Regulation (EU) 2019/1020 and the General Product Safety Regulation (EU) 2023/988, by specifically addressing challenges linked to online sales; for example, by including a definition for providers of online marketplaces, and by introducing product safety obligation requirements proportionate to the activities performed by the online marketplaces. This would align the obligations in relation to online and offline sales and, subject to further consultation, this could be a suitable model for updating UK legislation to improve clarity and compliance through alignment with our EU/EEA neighbours. This would create a fair-trading environment and better protect consumers.
- The EU Digital Services Act puts in place a framework of layered responsibilities targeted at different types of online intermediary services, including large online platforms that pose particular risks in the dissemination of illegal content and societal harms.
- Although not a complete answer, non-legislative mechanisms, such as industry-led Voluntary Initiatives like the Product Safety Pledge, could be useful stopgap until new legislation can be implemented.



1. CHALLENGES POSED BY ONLINE MARKETPLACES AND PLATFORMS

Equipping Consumers to Better Protect Themselves

- Almost a quarter of consumers aged 25-44 trust online marketplaces even though they have limited incentives to ensure the safety of the products sold on their platforms. A key way to protect consumers is through education. By incorporating information on consumer rights into Citizenship and Personal, Social, Health and Economic (PSHE) in schools, and the equivalent subjects in Wales, Scotland and Northern Ireland, will equip young consumers with the knowledge and skills to make informed decisions and avoid scams.
- As consumers are often unaware that they are purchasing from third-party sellers, introducing a pop-up warning for consumers would alert them when they are about to purchase a product from a third-party seller on an online platform.

Strengthening Checks at Ports and Borders

- There are also challenges for regulatory bodies, such as Local Authority Trading Standards services. Checks by Trading Standards based at UK ports and borders found that 45% of goods examined were unsafe and were stopped from entering the UK market.
- More Trading Standards resources and stronger powers are required to undertake these checks. In addition, more coordination and intelligence sharing with other regulatory bodies, together with more systematic collection of consumer detriment data, is required to help Trading Standards target its resources more effectively and improve consumer outcomes.

Almost a quarter of consumers aged 25-44 trust online marketplaces even though they have limited incentives to ensure the safety of the products sold on their platforms.



State of Play of Online Marketplaces

A third of UK retail is now conducted online.³ Internet platforms include online marketplaces, social media networks, discount, voucher and cashback platforms, chat forums, app stores, sharing economy operators, crowd-funding websites, review websites, online classified advertisements and price comparison websites. Online platforms have different operating models. Some sell goods themselves on their platform, as well as providing a platform for third-party sellers (both in the UK and outside the UK) to sell goods; others sell nothing themselves, but allow consumers and businesses to sell goods.

A number of the larger online marketplaces have a Primary Authority agreement with a individual Local Authority Trading Standards service, which provides the business with assured advice and support from expert Trading Standards professionals. Primary Authority officers are also a point for contact for other regulators in case of queries regarding the business.

Online marketplaces and other online social media platforms essentially provide a shop window for small businesses to advertise their products, facilitate customer payments, and in many cases facilitate delivery of the products to customers. This means small businesses can reach a wider audience for their products. The Office of Product Safety and Standards (OPSS) survey of *Consumer Attitudes to Product Safety* showed that only 52% of consumers feel that the UK's system for regulating the safety of products ensures that the products they buy are safe. It also showed a decline in consumers' trust in suppliers, with only 43% considering online marketplaces to be trustworthy.⁴ Despite this, lower income consumers are attracted to cheap online offers, hoping to get a bargain, but this leaves them susceptible to counterfeit and unsafe goods. In addition, the cost-of-living crisis has reduced consumers' disposable income, and this is driving an increase in demand for counterfeit goods in the UK.

Although some counterfeit or unsafe goods will end up in bricks and mortar retailers, Which? have become concerned in recent years about the safety of products sold on online marketplaces. Cheap, counterfeit goods and dangerous products, such as e-scooters and mobile phone chargers, and grey market food products, are increasingly being imported and sold through online marketplaces.⁵ The UK faces an increasing deluge of fakes that threaten UK families, businesses and our local and national economies. In 2019, the Organisation for Economic Co-operation and Development (OECD) estimated that the global trade in fake goods is worth an astounding \$464 billion USD, which amounts to 2.5% of world trade.⁶ Also, in 2016, the OECD estimated that imports of counterfeit or pirated goods into the UK accounted for £13.6 billion, which is 3% of all UK imports.⁷ Counterfeit products often do not comply with the product safety standards that are put in place to protect UK consumers from the risk of injury or death. In 2021/22, OPSS data showed that 1,832 (81%) of the 2,260 products that it targeted for testing from online marketplaces were non-compliant.⁸ In 2022/23, data showed 24% of the 3,000 safety notifications related to unsafe toys, with 25% of the products presenting a serious or high risk.⁹ Electrical Safety First also found that the majority (50%) of those 55 or above did not feel confident in differentiating between an online retailer, such as Amazon, and a marketplace, such as Amazon Marketplace.¹⁰ This means that unwitting consumers may buy dangerous products, including toys, without anyone undertaking any suitable checks. The UK is becoming a dumping ground for illegal and dangerous products, increasing the risk to consumers and damaging legitimate UK businesses. Moreover, it is estimated that the sale of counterfeit goods costs the UK exchequer £1.3 billion and that this figure is growing.¹¹ However, under-reporting of the sale of counterfeit and unsafe goods is highly likely to mask the extent of physical and financial harm to consumers.

³All-Party Parliamentary Group (APPG) for Consumer Protection, House of Commons Committee of Public Accounts - Protecting consumers from unsafe products, House of Commons, 16 September 2021, <https://committees.parliament.uk/publications/7451/documents/78000/default/>

⁴Office of Product Safety and Standards Delivery Report 2022-2023, 9 January 2024, <https://www.gov.uk/government/publications/opss-delivery-report-2022-2023/opss-delivery-report-2022-2023>

⁵Witness evidence

⁶Global Trade in Fakes: A Worrying Threat, OECD and the EU Intellectual Property Office (EUIPO), June 22, 2021, <https://www.oecd-ilibrary.org/docserver/07e8f19e-en.pdf?expires=1712571507&id=id&accname=guest&checksum=1118E9FCC3186E6F9A10A35FB04644BD>

⁷Trade in Counterfeit Products and the UK Economy, 2019 Update, OECD and IPO, <https://www.oecd.org/gov/risk/trade-in-counterfeit-products-and-uk-economy-report-update-2019.pdf>

⁸OMP product testing programme: October 2021 to September 2022, Office of Product Safety and Standards, 23 August 2023, <https://www.gov.uk/government/publications/online-marketplace-product-testing-programme/omp-product-testing-programme-october-2021-to-september-2022>

⁹Product Safety Database report 2022 - 2023, Office of Product Safety and Standards, 18 October 2023, <https://www.gov.uk/government/statistics/product-safety-database-annual-reports/product-safety-database-report-2022-to-2023>

¹⁰Written submission from Electrical Safety First

¹¹Witness evidence from Anti-Counterfeiting Group



Figure 1: Unsafe Products sold through Online Marketplaces

Which? undertook product testing and found many examples of illegal and harmful items sold via online marketplaces. This included mini-heaters that melted, faulty Christmas lights that posed a fire risk, dangerous baby carriers that posed a risk to babies, diet pills with toxic ingredients, zombie knives and batons advertised to children, and faulty smoke alarms that failed to detect smoke.¹²

Over a four-year period, between 2018 and 2022, the British Toy and Hobby Association (BTHA) tested 545 toys sold by third-party sellers on four online marketplaces (AliExpress, Amazon, eBay, and Wish). 86% were found to be non-compliant and 48% were found to be unsafe, failing toy safety standards.¹³ In their latest tests from the 2022 study, 100% of the products were found to be illegal and 90% unsafe.¹⁴ This included small high-powered magnets which have put children in hospital after being swallowed, accessible button batteries that have caused fatalities, toys with more than 100 times the limits of harmful phthalates and products that overheat causing burns.¹⁵

Electrical Safety First found over 60 unsafe e-bike and e-scooter chargers for sale on online marketplaces (eBay, Amazon, AliExpress and Wish), with a fatal fire in Liverpool which was caused by a faulty e-bike battery.¹⁶ They also reported that 93% of electrical products sold via online marketplaces were unsafe. In 2020/21 they also found that unsafe electrical goods purchased from online marketplaces caused fires in family homes in Kent, Darlington and Firth, and in 2015 led to the death of a lady, demonstrating the very real risks to which consumers are being exposed.¹⁷



Who should be Accountable in the Online Marketplace and Online Supply Chain?

A number of stakeholders pointed out that although online marketplaces and other online platforms offer consumers greater choice, existing UK product safety legislation has not kept up with rapidly changing methods of supply and consumer shopping habits, leaving gaps in consumer protection and putting consumers at risk from counterfeit and unsafe goods.¹⁸ For example, the Consumer Protection Act 1987¹⁹ and the General Product Safety Regulations 2005 (GPSR 2005)²⁰ were conceived long before the growth of online marketplaces and other online platforms.

Under product safety legislation, for example the GPSR 2005, places obligations on producers and distributors, to ensure products are compliant with safety requirements, whether importing, supplying or placing products on the UK market.

It could be argued that providers of online marketplaces that are selling third-party products are taking on many of the functions of a 'distributor.'²¹ But due to the lack of clarity in the current legislation, online marketplaces and other online platforms have argued that there are no legal obligations on them, making it difficult for enforcers to hold them to account. If this is the case, then it would mean that online marketplaces do not have the same responsibilities as traditional retail outlets or websites to ensure the safety and compliance of products. Given their size and influence, these companies are likely to have the resource and technological capability to effectively regulate their own sites, but lack sufficient incentives to do so due to gaps in the existing law. However, this does not clearly recognise online marketplaces or other online platforms, so there have been differing views as to who is legally responsible for ensuring the safety and compliance of products sold on these platforms.

It could be argued that providers of online marketplaces that are selling third party products are taking on many of the functions of a 'distributor.'

¹²Written submission from Which?
¹³The Toys (Safety) Regulations 2011
¹⁴Witness evidence of British Toy and Hobby Association
¹⁵STILL toying with children's safety. Project update, British Toy and Hobby Association, 25 October 2022, <https://www.btha.co.uk/wp-content/uploads/2022/11/BTHA-Online-Marketplace-Report-2022-FINAL.pdf>
¹⁶Written submission from Electrical Safety First
¹⁷Written submission from Electrical Safety First

¹⁸Written submission from Which?
¹⁹C.43, <https://www.legislation.gov.uk/ukpga/1987/43/contents>
²⁰2005, No. 1803, <https://www.legislation.gov.uk/uksi/2005/1803/contents>
²¹Under the GPSR 2005, "distributor" means a professional in the supply chain whose activity does not affect the safety properties of a product

Fulfilment Houses

Intermediaries in the online supply chain, such as fulfilment service providers (fulfilment houses), play a key role in enabling the sale of products online. Often overseas sellers channel their goods through service fulfilment houses. Under HMRC legislation, operators of fulfilment houses which store goods imported from outside the UK, on behalf of someone outside the UK, or where the goods have not been sold in the UK before, must apply for the Fulfilment House Due Diligence Scheme. The businesses are then placed on a public register and are required to carry out checks on the products and keep records. Failure to register is an offence.²² HMRC also inspect fulfilment houses to check compliance. This is a key inland intervention point for HMRC and other enforcement agencies to identify and put a stop to non-compliant consignments, and enforcement agencies should be enabled to utilise this more.

However, fulfilment houses are not specifically mentioned under product safety legislation and so there is a lack of clarity as to their responsibilities. As a result, they also have no vested interest in ensuring the goods comply with intellectual property or product safety laws. It is important for these businesses to be held accountable for the products they supply, particularly where there is no manufacturer (or manufacturer's representative) or importer based in the UK. Their responsibilities should reflect those of importers, including the need to take proactive action to ensure products are safe, such as testing and compiling technical files, and taking corrective action when needed.

Third-Party Sellers

Third-party sellers who sell their goods through online marketplaces are covered by product safety legislation, but Trading Standards investigations have found that many fail to comply with their legal duties. If a consumer purchases products from a trader, rather than a private individual, the seller has duties and liabilities under the legislation and consumers have more rights to redress when things go wrong. It is therefore essential that the status of the seller is correctly declared on online platforms. Those entrepreneurs who do wish to be compliant when selling their goods online may require more education on their legal duties. Trading Standards have also found that many third-party sellers are based overseas, in countries such as China, USA or Australia, or may simply disappear. This means if something goes wrong with a purchase, there is no-one in the UK to hold to account, which also prevents consumers from pursuing a refund.

It is noteworthy that HMRC regulation places responsibilities on UK entities, such as fulfilment houses, freight forwarders and importers, where they act for any entity not based in the UK. Also, online marketplaces are responsible for the VAT on sales of goods by third-party sellers that are not established in the UK. In addition, Customs legislation enables enforcers to pass all costs of examination of imports on to the importer (which includes identifying a load for full examination, moving to a secure site for the examination) for Inland Pre-Clearance sites.

We need to create a fair and safe trading environment for businesses and one that consumers can trust. To do this, we need to create the right incentives for well-resourced, technologically advanced online platforms to ensure products sold through their platforms are safe and legal. We need clarity on the responsibilities of online marketplaces and other platforms in the legislation. Online marketplaces and other platforms should have legal duties placed upon them, similar to those in the Online Safety Act 2023.²³

This should include: a legal duty to provide a simple and effective process for taking down web pages where non-compliant products are being sold; greater due diligence requirements on larger platforms, such as risk assessments, to prevent and quickly identify counterfeit or unsafe products online; and a requirement to remove all same or similar non-compliant products.

²²Guidance: Apply for the Fulfilment House Due Diligence Scheme, HMRC, 6 November 2017, <https://www.gov.uk/guidance/fulfilment-house-due-diligence-scheme>
²³Section 10(3)(b), Online Safety Act 2023, <https://www.legislation.gov.uk/ukpga/2023/50/contents>





Figure 2: Removing Unsafe Products from Online Marketplaces

Recalled products are not highlighted on online marketplaces. Electrical Safety First found recalled white goods being sold on Facebook Marketplace and eBay, such as tumble dryers and washing machines that were at risk of overheating and therefore a fire risk. eBay removed the listings and have created a Regulatory Portal that enables regulators to get listings removed within two hours. After two months, 60% of the dangerous recalled products remained listed on Facebook Marketplace and even more concerning was that Facebook Marketplace had no mechanism to report a product which had been recalled.²⁴



Helping Consumers when Purchasing Products from Online Marketplaces

We know that young consumers are more likely to engage with the poorly regulated online platforms market where scams occur more frequently. Almost a quarter of consumers aged 25-34 and 35-44 trust online marketplaces²⁵ although these companies have limited incentives to ensure the safety of the products sold on their platforms. IPO's research indicated that 73% of respondents had never knowingly purchased counterfeit goods. The top three reasons for not purchasing counterfeits were: not liking the quality; worrying about supporting criminal activity; and the use of low-cost labour or poor working conditions. IPO also found that 29% of respondents had knowingly purchased a counterfeit product, with counterfeit toys being one of the highest proportions of such purchases (14%).²⁶ Also, consumers are not always aware when they are purchasing products from third-party sellers on online platforms. Online marketplaces should be encouraged to help consumers by raising awareness of possible problems and issuing a warning.

A lack of knowledge of their consumer rights in relation to online marketplaces and redress means that consumers are more susceptible to scams or not getting what they want. A poll by CTSI showed that 82% of people agreed that consumer rights should be taught in schools.²⁷ Equipping young consumers with the knowledge and skills to understand their rights is vital in enabling them to be more confident in asserting their rights, avoiding consumer problems and seeking redress if things do go wrong.

Citizenship and Personal, Social, Health and Economic (PSHE) education syllabuses, and the equivalent subjects in Wales, Scotland and Northern Ireland, are important tools in children's education as they equip pupils with the knowledge and skills necessary to make informed decisions and give them a sound understanding of risk. Education on consumer rights when purchasing from online marketplaces and other online platforms should form part of the Citizenship and PHSE syllabuses, and the equivalent subjects in Wales, Scotland and Northern Ireland, and also part of the apprenticeship and vocational trade qualifications so consumers can better protect themselves and help create more resilient communities. In addition, a pop-up warning could be used to alert consumers when they are about to purchase a product from a third-party seller on an online platform.

A poll by CTSI showed that 82% of people agreed that consumer rights should be taught in schools.

Actions of Online Marketplaces to keep Unsafe Goods off their Platforms

Online platforms with Primary Authority agreements in place work closely with their Primary Authorities to tighten up their procedures. Both eBay and Amazon provided evidence to the inquiry, highlighting their commitment to the removal of unsafe products from their online marketplaces. To ensure the safety and well-being of consumers, both companies commit to not allow product listings where the products have been recalled by a manufacturer or Government agency, where their sale is prohibited by law or they do not comply with product safety laws.

The companies explained that they continuously scan data points available to them, including those related to sellers, products, brands and offers, to detect activity that indicates products offered on their platforms that might be of concern. When unsafe products are detected, this triggers an internal investigation, which then results in the products being blocked or removed from sale and appropriate action taken against the seller in question. Both online marketplaces are signatories of the EU Product Safety Pledge which is discussed later in the report.

Evidence from other stakeholders suggests that more needs to be done to reduce the volume of unsafe and non-compliant products sold by third-party sellers on online marketplaces and platforms.

²⁴Written submission from Electrical Safety First

²⁵Written submission from Electrical Safety First

²⁶IPO counterfeit goods research (Wave 3) - Part 1 - Methodology, Intellectual Property Office, February 2023, <https://www.gov.uk/government/publications/ipo-counterfeit-goods-research-wave-3/ipo-counterfeit-goods-research-wave-3-part-1-methodology>

²⁷CTSI commissioned survey of 1,000 people across the UK, September 2023, https://charts.censuswide.com/CW12206EC/CW12206EC_V1box.html

Section Recommendations

1. Introduce a levy on online marketplaces and other platforms, a windfall tax or additional tax revenue, or a combination of these taxes to fund and support ongoing and future regulation of online marketplaces and platforms by Local Authority Trading Standards services.
2. Introduce clear legal duties on online marketplaces and other online platforms in line with those set out in the Online Safety Act 2023.²⁸
3. Include a definition for a 'provider of an online marketplace' under new UK General Product Safety Regulations, so it is clear that online marketplaces and other online platforms are responsible for the legal compliance of the products sold on their platforms, and in particular products sold by third-party sellers.
4. Include a definition of 'fulfilment service provider' under new UK General Product Safety Regulations, so it is clear that they are responsible for ensuring the compliance of the goods supplied where there is no manufacturer (or its representative) or importer based in the UK.
5. Include information on consumer rights when purchasing from online marketplaces and other online platforms as part of the Citizenship and Personal, Social, Health and Economic (PSHE) syllabuses for 14–18-year-olds or embed them into the core national curriculum and the equivalent subjects in Wales, Scotland and Northern Ireland.
6. Introduce a standardised industry pop-up warning to alert consumers when they are about to purchase a product from a third-party seller on an online platform.

Importance of our Ports and Borders

The UK ports and borders industry is the second largest in Europe, with 95% of cargo arriving at our sea ports.²⁹ In 2022, 120 commercial ports handled 458.9 million tonnes of cargo, 51 of which are major ports handling around one million tonnes of cargo a year.³⁰ In coordination with the other regulatory bodies, Local Authority Trading Standards services provide crucial protection at our ports and borders, including container ports, roll-on roll-off (RoRo) ports, airports, inland borders, postal hubs, by preventing illegal and unsafe products entering the UK market. Many of these products are then sold on online marketplaces or other online platforms. Enforcement activities at our ports and borders are essential in preventing non-compliant goods being distributed across the UK, and the work relieves inland Local Authority Trading Standards services from the pressure of removing these non-compliant goods from sale in retailers' outlets.

Regulatory Bodies with Enforcement Duties for Online Marketplaces and Platforms

A number of regulatory bodies have enforcement duties in relation to online marketplaces and other platforms, and they work closely together at UK ports and borders. These include Trading Standards services, the Office of Product Safety and Standards (OPSS), the Intellectual Property Office (IPO), HM Border Force and HM Revenue and Customs, the Medicines and Healthcare products Regulatory Agency (MHRA), the Food Standards Agency and the Advertising Standards Authority (ASA). However, stakeholders who gave evidence indicated that more needs to be done to support enforcement bodies, such as Trading Standards, to ensure the safety and compliance of products sold through online marketplaces and other platforms.

²⁸Section 10(3)(b), Online Safety Act 2023, <https://www.legislation.gov.uk/ukpga/2023/50/contents>

²⁹Transport statistics Great Britain, 2021, <https://www.gov.uk/government/statistics/transport-statistics-great-britain-2021/transport-statistics-great-britain-2021>, <https://www.gov.uk/government/statistics/port-freight-annual-statistics-2022/port-freight-annual-statistics-2022-overview-of-port-freight-statistics-and-useful-information>

³⁰Port freight annual statistics, 2021, <https://www.gov.uk/government/statistics/port-freight-annual-statistics-2021/port-freight-annual-statistics-2021-overview-of-port-freight-statistics-and-useful-information#:~:text=In%202021%2C%20a%20total%20of,an%20impact%20on%20cargo%20volumes>

Enforcement at our Ports and Borders

OPSS provides funding to Trading Standards for activities at a number of UK ports and entry points and provides access to free product safety testing. When OPSS took over ports and borders work from National Trading Standards, 15 ports were funded based on intelligence and risk, including container ports, RoRo ports, airports and postal hubs.³¹ In April 2022, the IPO employed three Intellectual Property (IP) Crime Coordinators to work with regional Trading Standards Teams in a two-year pilot, with the aim of supporting Trading Standards professionals to tackle IP crime, champion IP rights, and act as regional points of contact. In 2023, these posts were made permanent. Trading Standards professionals who gave evidence to the APPG explained that following the UK's exit from the EU, UK enforcement bodies now bear the brunt of carrying out checks on goods coming through UK ports and borders before being placed on the UK market. Using an intelligence-led approach, Trading Standards across the UK found 45% of goods they examined at UK ports and borders were unsafe and stopped them entering the UK market. However, officers explained that examining goods at our ports and borders is very resource intensive due to the high volume of goods coming through multiple, often misdescribed, shipments. This makes it extremely challenging to target potentially non-compliant goods. This is putting pressure on already stretched Trading Standards resources in Local Authorities with ports or borders in their area. Some officers also explained that the number of checks at our ports and borders are not sufficient to stop many counterfeit goods and unsafe products entering the UK. Other officers explained that there were issues with communication and sharing information with other regulatory bodies, which means non-compliant products may slip through the net.³² The lack of a systematic way to collect consumer detriment data also hinders Trading Standards in effectively targeting their limited resources effectively. OPSS has worked closely with the NHS to improve its data on product-related injuries. This is an opportunity to build on this, working with RoSPA, medical experts and other interested stakeholders to explore how injury data can be collected and used to support Trading Standards professionals.

Using an intelligence-led approach, Trading Standards across the UK found 45% of goods they examined at UK ports and borders were unsafe and stopped them entering the UK market.

Figure 3: Suffolk Trading Standards Imports Team's surveillance at the Port of Felixstowe

In 2022/2023, using an intelligence-led approach, Suffolk Trading Standards Imports Team found that 49% of consignments examined at the Port of Felixstowe contained unsafe products and were refused entry to the UK, including toys and e-scooters. In total 135,000 unsafe products across 405 product lines and 189,000 non-compliant goods across 311 product lines were detected by the Suffolk Imports Team. For every £1 invested in the Suffolk Imports Team, the net economic benefits generated by the team from reduced impacts on consumers, public services and businesses was £35.74. The work of the Imports team has not only saved lives, but also saved the UK economy an estimated £12.8 million a year.

In evidence, Trading Standards professionals also explained that they lack sufficient powers to adequately hold online platforms to account. 90% of officers say they have been unable to take action against online platforms, including scam or fraudulent websites. CTSI's recent members' survey found that Facebook Marketplace was the most complained about and the slowest to take action against problem sellers; eBay and Amazon were also highlighted.³³ OPSS recognised that Trading Standards resources and powers are limited, particularly where sellers are based overseas with no UK business in the supply chain.³⁴ The EU and EEA have an arrangement with certain Third Countries, for example with China, to act on products published on the Safety Gate due to their serious risk. Neither OPSS nor Trading Standards have jurisdiction to tackle sellers overseas so are unable to take any enforcement action against these suppliers. There needs to be a statutory framework to compel domain hosts to suspend or remove illegal websites.

In evidence sessions, stakeholders called for more funding and resources for Local Authority Trading Standards services so they can undertake checks at all UK ports and borders to tackle non-compliant products.³⁵ Stakeholders also called for clearer powers for Trading Standards at UK ports and borders and the EU Regulation on Accreditation and Market Surveillance and EU General Product Safety Regulation provide a useful basis for updating Trading Standards powers.³⁶ Achieving this will help create a safer trading environment for businesses and consumers.

³¹NATIONAL TRADING STANDARDS - TEN YEAR IMPACTS, APRIL 2012, https://www.nationaltradingstandards.uk/uploads/NTS%2010_year_impacts%20-Oct%2022.pdf
³²Written evidence from Hillingdon Trading Standards

³³CTSI Members' survey, 20 June 2023, <https://www.tradingstandards.uk/news-policy-campaigns/news-room/2023/facebook-marketplace-tops-list-of-most-complained-about-online-retail-platforms/>
³⁴All-Party Parliamentary Group (APPG) for Consumer Protection, House of Commons Committee of Public Accounts - Protecting consumers from unsafe products, House of Commons, 16 September 2021, Nineteenth Report of Session 2021–22, 30 September 2021, <https://committees.parliament.uk/publications/7451/documents/78000/default/>
³⁵Witness evidence from Scottish Trading Standards
³⁶Regulation (EU) 2023/988 on general product safety, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32023R0988&qid=1718367633316>

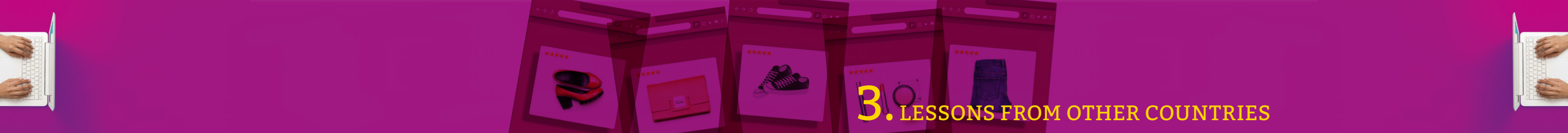


Figure 4: IPO Enforcement Activities

Both the IPO and HMRC fund posts within HM Border Force across the UK. This helps to prevent counterfeit goods entering the UK and share intelligence on incoming non-compliant goods. The IPO provides crucial strategic oversight and operational input. This work resulted in the East Midlands Airport Freight Team seizing over £55 million worth of counterfeit goods entering the UK through the fast parcel route.³⁷

Section Recommendations:

1. Provide increased, ring-fenced and sustained long-term funding for Local Authority Trading Standards services to support enforcement activities at our UK ports and borders for all entry points, including inland borders.
2. Extend Trading Standards information-gathering powers to include providers of online marketplaces and other online platforms.
3. Support better coordination and intelligence sharing between different regulatory bodies and Trading Standards at UK ports and borders by agreeing roles and responsibilities.
4. OPSS to report annually on the consumer detriment saved as a result of the ports and borders work undertaken by Trading Standards.
5. Develop a more systematic collection of consumer data on online marketplaces and other online platforms to gather a better picture of the harms that consumers face in this area.
6. Build on OPSS's work with the NHS by working with RoSPA, medical professionals with expertise in this area and other interested stakeholders to explore how injury data can be collected to help Trading Standards professionals better target their limited resources.

3. LESSONS FROM OTHER COUNTRIES

Response from Different Countries to Online Marketplaces

Some stakeholders who gave evidence to the APPG explained that, as online markets grow, the most effective way to reduce the number of non-compliant goods entering UK markets is to make online marketplaces and other online platforms responsible for the safety of the products sold on their platforms or, alternatively, to require these platforms to identify a responsible person who is accountable. A number of countries, such as the EU, Australia and the USA, have already introduced consumer protection measures to prevent faulty, dangerous, illegal and counterfeit products from being advertised and sold to consumers. These protections range from statutory and regulatory regimes to voluntary schemes which could be informative for strengthening consumer protection in the UK.

USA

The USA introduced the Shop Safe Act, which centres on trademark protection where a counterfeit product poses a health risk, including illness, disease, injury, allergic reaction or death.³⁸ The Act holds online platforms accountable where third-party sellers which are outside the USA use infringing trademarks. An online platform can avoid liability if they have verified the sellers' details, enable trademark owners to request removal of infringing trademarks and implement procedures to remove and ban repeat offenders. The US Federal Government has also introduced legislation in relation to compulsory product pre-market conformity assessment of consumer products. Certain products must be tested by authorised laboratories and the results sent to the Federal Government before being placed on the US market. The US is also the leader on online advice to prospective importers to the bloc and utilises business interface initiatives, such as AI chatbots for preliminary guidance and screening of inquiries. However, this does increase compliance costs for small businesses, which could stifle innovation and limit consumer choice.

Certain products must be tested by authorised laboratories and the results sent to the Federal Government before being placed on the US market.

³⁷IPO counterfeit goods research (Wave 3) - Part 1 - Methodology, Intellectual Property Office, February 2023, <https://www.gov.uk/government/publications/ipo-counterfeit-goods-research-wave-3/ipo-counterfeit-goods-research-wave-3-part-1-methodology>

³⁸Stopping Harmful Offers on Platforms by Screening Against Fakes in Ecommerce Act 2021/22, <https://docs.house.gov/meetings/JU/JU00/20210929/114092/BILLS-117HR5374ih.pdf>

EU Product Compliance Policy

The EU has statutory underpinning to regulate products entering the EU market, such as through the Regulation on Market Surveillance and Compliance of Products.³⁹ Under the regulation, certain products may not be offered for sale to EU consumers unless there is an ‘economic operator’ established within the EU who is obliged to share information and cooperate with market surveillance authorities.

An ‘economic operator’ is defined under the regulation as a manufacturer, authorised representative, importer, distributor, or fulfilment service provider who:

- Keeps EU conformity and performance declarations and makes these and the technical documentation available to authorities when asked
- Informs the authorities when they consider a product poses a risk
- Cooperates with the authorities, when asked, by taking immediate corrective action if a product is considered non-compliant, and helps to eliminate or mitigate risks
- Name and contact details are on the product, packaging, or accompanying documents

The inclusion of ‘fulfilment service provider’ within the definition of economic operator is crucial. It includes any person who performs at least two of the following services: warehousing, packaging, addressing, and/or dispatching. This means owners and operators of online marketplaces and platforms are held liable for any faulty products, giving them an incentive to comply with regulations. These duties are analogous with those of manufacturers and importers, including the need to take proactive action to ensure products are safe such as testing and compiling technical files, and taking advanced corrective action when needed.

The EU has also introduced the new EU General Product Safety Regulation (EU GPSR Regulation)⁴⁰ which provides a safety net for products or risks not regulated in other legislation.

This regulation requires a ‘Responsible Person’ to be established within the EU before products can be placed on the EU market. The Responsible Person established in the EU/EEA is required to regularly check certain aspects, including that the product complies with pre-market technical documentation.⁴¹ This means that where a manufacturer, importer, or distributor cannot be identified, then someone else in the supply chain, such as the online marketplace or platform provider, would be held responsible for ensuring the compliance of products on their platform.⁴²

³⁹Regulation (EU) 2019/2020 aims to protect consumers' health and safety, the environment and other public interests by improving and modernising market surveillance. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32019R1020>

⁴⁰Regulation (EU) 2023/988. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023R0988>

⁴¹Article 16.2 (a)

⁴²Written submission from Electrical Safety First



Obligations imposed under this Regulation include:

- Establishing a single point of contact (located within the EU) for market surveillance authorities and consumers.
- Responding to notices from authorities within two working days.
- Designing interfaces to enable traders to display the information required for online offers.
- Reporting dangerous products via the Safety Gate.
- Reporting accidents caused by products resulting in serious risk to, or actual damage of the health or safety of, a consumer, via the Safety Gate, directly notify affected consumers about recalls and publish information about recalls, among others.
- Enabling traders to provide identification and safety information about the products they offer.
- Suspending traders that ‘frequently’ offer dangerous products on an online platform, and having internal processes and policies for product safety.

This would create a useful backstop to the Consumer Protection Act 1987 and the General Product Safety Regulations 2005. Subject to testing through further consultation, the EU GPSR Regulation could be used as a basis for new UK legislation to strengthen accountability of online marketplaces and improve consumer protection.

The EU GPSR Regulation will apply in Northern Ireland from December 2024, so it would make sense to implement similar legislation across the rest of the UK. It should also be noted that provision has been made for operational cooperation between UK and EU market surveillance authorities within the EU-UK Trade and Cooperation Agreement of 2020, which is welcomed.

In addition, the EU Digital Services Act (the DSA) modernises the existing e-commerce Directive and address illegal content, transparent advertising and disinformation. It aims to create a safer and more transparent online environment for users. It does this by placing obligations on all digital services that connect consumers to goods, services and content, including “intermediaries” that provide conduit, caching and hosting services.



Voluntary Initiatives

Some stakeholders who gave evidence to the APPG considered that voluntary initiatives could be used as a temporary solution while waiting for clearer legislation to be introduced. The Internet Intermediaries Working Group is a cross-agency group bringing together representatives from UK Regulation, Tax and Police Authorities.⁴³ It aims to provide consistent advice to improve the compliance of online platforms and their users, and reduce harm to their consumer and business users. In January this year, the Working Group developed guidance for internet platforms setting out their key legal obligations to help users to make informed decisions and reduce the risk of economic and health harm to consumers before, during and after purchase. It also includes sector-specific advice.

In 2018, the European Commission developed a Product Safety Pledge aimed at encouraging signatory online marketplaces and other online platforms to go beyond their legal obligations to better protect consumers' safety. The Product Safety Pledge was integrated into the new Consumer Protection Pledge in November 2023. It commits signatories to certain product safety responsibilities and to report on the outcomes of their product safety measures. Australia has also developed its own pledge based on the EU one. Amazon has also developed its industry blueprint for private and public sector partnership to improve product safety for consumers.⁴⁴ In the absence of clear legislation, a voluntary initiative would offer an interim solution to provide consumers with some protection and ensure legitimate businesses are not disadvantaged.

⁴³The Working Group includes: Code of Advertising Practice (CAP), Chartered Trading Standards Institute (CTSI), Food Standards Agency (FSA), Intellectual Property Office (IPO), Ofcom, HM Revenue & Customs (HMRC), Health and Safety Executive (HSE), Medicines and Healthcare products Regulatory Agency (MHRA), National Fraud Intelligence Bureau (NFIB), National Trading Standards (NTS) eCrime team, Securities and Futures Commission (SFC), Scottish Government and Scottish Trading Standards Services (SCOTSS)

⁴⁴A blueprint for private and public sector partnership to improve product safety for consumers, Amazon, 14 February 2024, <https://www.aboutamazon.eu/news/customer-trust/a-blueprint-for-private-and-public-sector-partnership-to-improve-product-safety-for-consumers>

⁴⁵EU Consumer Protection Pledge, November 2023, https://commission.europa.eu/business-economy-euro/product-safety-and-requirements/product-safety/product-safety-pledge_en

Figure 5: EU Consumer Protection Pledge

There are now 11 international signatories to the EU's Consumer Protection Pledge⁴⁵ including eBay, Amazon and AliExpress and other European platforms.

The pledge includes commitments to:

- Remove identified problem listings on their platform within two working days
- Cooperate with market surveillance authorities
- Provide a single contact point for Member States' authorities to notify dangerous products
- Act against repeat offenders
- Prevent reappearance of dangerous product listings
- A 'notice and takedown' mechanism
- Proactive monitoring of recall sites
- Additional commitments regarding recalls, transparency and trader education.



Figure 6: Amazon's Blueprint to Improve Product Safety for Consumers

Amazon's blueprint for private and public sector partnership to improve product safety includes the following three elements:

- **Provide consumers with more effective product and usage information to help them use products safely** - Manufacturers need to be able to provide product usage information digitally so it can always be complete, up to date, and in the customer's preferred language.
- **Greater data sharing on emerging product safety risks to protect consumers earlier** All in the retail supply chain should share information on safety concerns more quickly and transparently to ensure emerging product safety risks are addressed.
- **Modernise the product recall process to better protect consumers** - Regulators should include more basic product information in a product recall, requiring retailers to contact customers directly through whatever means they have (email, SMS, physical address, phone number or otherwise). Recall notices need to detail the next steps customers should take to protect themselves.

Section Recommendations

1. As an interim measure, work with providers of online marketplaces and other online platforms to develop a code of practice to prevent unsafe and counterfeit goods being sold on online platforms.

Figure 7: eBay's Product Safety Initiative

eBay's Product Safety Initiative focuses on the following three elements:

- **Fastest possible removal of listings offering unsafe products** - eBay has launched the Regulatory Portal that removes listings reported by regulators within two hours. This is a significant improvement compared to the two working days required by the EU Product Safety Pledge.
- **Proactive identification of non-compliant products** - eBay has launched its CE Audit Program in which it requests CE-mark documentation from sellers for their products and validates the documents.
- **Improved communication between regulators and online marketplaces** - eBay, among other marketplaces, has provided feedback to the European Commission what information needs to be included in a safety alert in order to allow identification of the products. This has resulted in the European Commission issuing a template for safety alerts.



KEY STATISTICS

Only **52%** of consumers feel that the UK's system for regulating the safety of products ensures that products they buy are safe.

43% of consumers consider online marketplaces to be trustworthy.

In 2019, the Organisation for Economic Co-operation and Development (OECD) estimated that the global trade in fake goods is worth an astounding **\$464 billion USD**, which amounts to **2.5%** of world trade.

In 2016, the OECD estimated that imports of counterfeit or pirated goods into the UK accounted for **£13.6 billion**, which is **3%** of all UK imports.

The sale of counterfeit goods costs the UK Exchequer **£1.3 billion** and is growing.

The Office of Product Safety and Standards found **24%** of safety notifications related to unsafe toys, with **25%** of the products presenting a serious or high risk.

In 2022, the British Toy and Hobby Association purchased **40** toys from third-party sellers on four major online marketplaces and found **100%** were illegal to sell in the UK, and **90%** were unsafe for a child to play with.

In tests, Electrical Safety First found over **60** unsafe e-bike and e-scooter chargers for sale on online marketplaces.

Electrical Safety First found that **93%** of electrical products sold via online marketplaces were unsafe.

Electrical Safety First found that two months after being recalled, **60%** of the dangerous products they tested remained listed on Facebook Marketplace.

A poll by CTSI showed that **82%** of people agreed that consumer rights should be taught in schools.

45% of goods examined by Trading Standards nationally at UK ports and borders were unsafe and were stopped from entering the UK market.

Suffolk Trading Standards Imports Team found that **49%** of consignments examined at the Port of Felixstowe contained unsafe products, including toys, nursery goods, electrical goods and e-scooters.

In total **135,000** unsafe products across **405** product lines and **189,000** non-compliant goods across **311** product lines were detected by the Suffolk Trading Standards Imports Team.

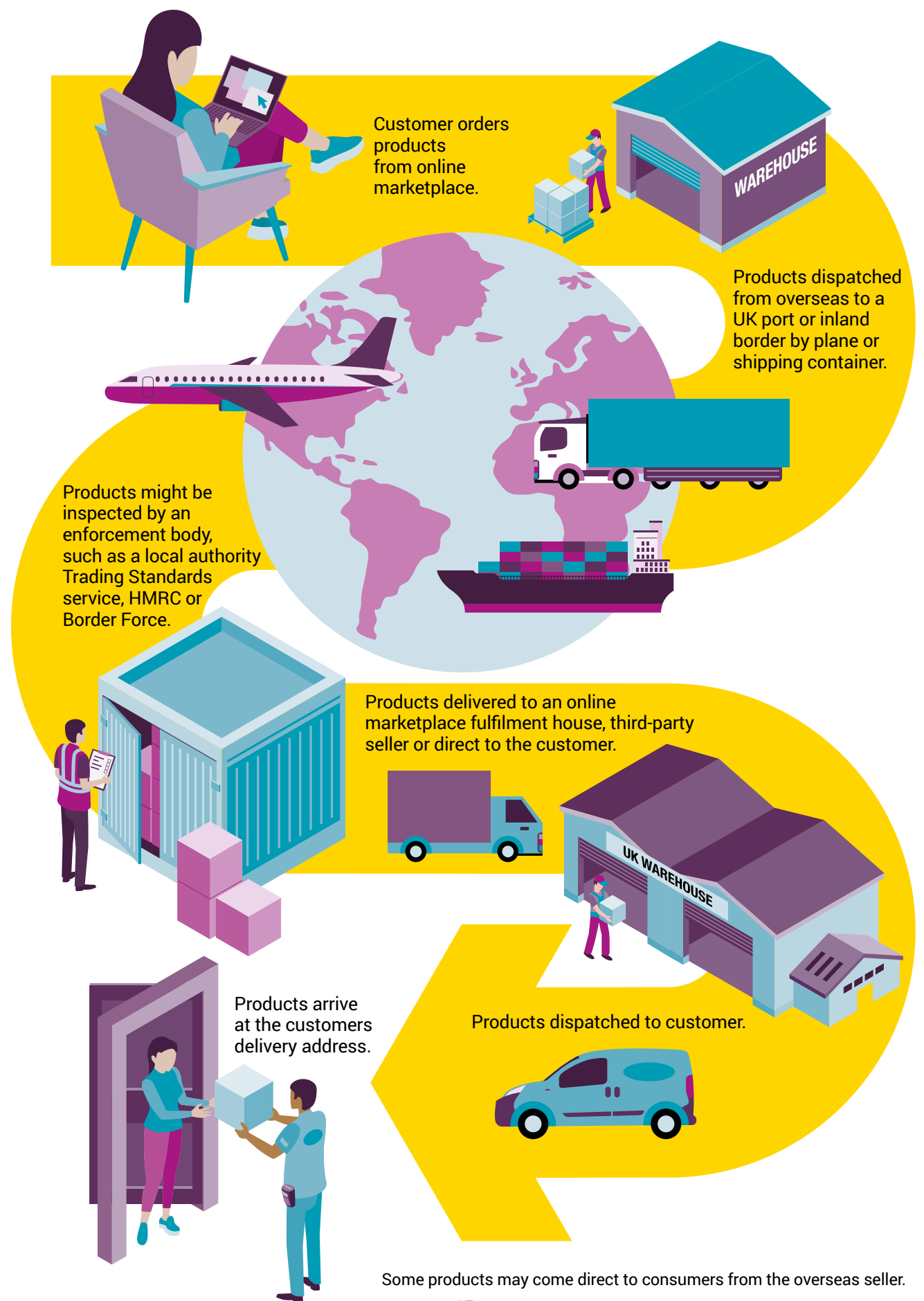
For every **£1** invested in the Suffolk Trading Standards Imports Team, the net economic benefits generated by the team from reduced impacts on consumers, public services and businesses was **£35.74**.

The Suffolk Trading Standards Imports Team has not only saved lives, but also saved the UK economy an estimated **£12.8 million** a year by preventing unsafe and non-compliant goods from entering the UK supply chain.

90% of Trading Standards professionals say they have been unable to act against online platforms, including scam or fraudulent websites.

The East Midlands Airport Freight Team seized over **£55 million** worth of counterfeit goods entering the UK through the fast parcel route.

PRODUCT JOURNEY IN RELATION TO ONLINE MARKETPLACE





4. OUR RECOMMENDATIONS:

In this report we make recommendations for government, for businesses and consumers.

For Government:

1. Introduce clear legal duties on online marketplaces and other online platforms in line with those set out in the Online Safety Act 2023.
2. Include a definition for a 'provider of an online marketplace' under new UK General Product Safety Regulations so it is clear that online marketplaces and other online platforms are responsible for the legal compliance of the products sold on their platforms, in particular products sold by third-party sellers.
3. Include a definition of 'fulfilment service provider' under new UK General Product Safety Regulations, so it is clear that they are responsible for ensuring the compliance of the goods supplied where there is no manufacturer (or its representative) or importer based in the UK.
4. Introduce a levy on online marketplaces and other platforms, a windfall tax or additional tax revenue, or a combination of these taxes to fund and support ongoing and future regulation of online marketplaces and platforms by Local Authority Trading Standards services.
5. Provide increased, ring-fenced and sustained long-term funding for Local Authority Trading Standards services to support enforcement activities at our UK ports and borders for all entry points, including inland borders.
6. Extend Trading Standards information-gathering powers to include providers of online marketplaces and other online platforms.
7. Support better coordination and intelligence sharing between different regulatory bodies and Trading Standards at UK ports and borders by agreeing roles and responsibilities.

8. OPSS to report annually on the consumer detriment saved as a result of the ports and borders work undertaken by Trading Standards.
9. Develop a more systematic collection of consumer data on online marketplaces and other platforms to gather a better picture of the harms that consumers face in this area.
10. Build on OPSS's work with the NHS by working with RoSPA, medical professionals with expertise in this area and other interested stakeholders to explore how injury data can be collected to help Trading Standards professionals better target their limited resources.

For Businesses:

1. As an interim measure, work with providers of online marketplaces and other online platforms to develop a code of practice to prevent unsafe and counterfeit goods being sold on online platforms.

For Consumers:

1. Include consumer rights when purchasing from online marketplaces and other platforms as part of the Citizenship and Personal, Social, Health and Economic (PSHE) syllabuses for 14–18-year-olds and equivalent subjects in Wales, Scotland and Northern Ireland or embed them into the core national curriculum.
2. Introduce a pop-up warning to alert consumers when they are about to purchase a product from a third-party seller on an online platform.

Figures Index

- 1: Unsafe Products sold through Online Marketplaces
- 2: Removing Unsafe Products from Online Marketplaces
- 3: Suffolk Imports Team's surveillance at the Port of Felixstowe
- 4: IPO Enforcement Activities
- 5: EU Product Safety Pledge
- 6: Amazon's Blueprint to Improve Product Safety for Consumers
- 7: eBay's Product Safety Initiative

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