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# Covernotes

Explaining issues that  
affect insurance

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## New product defect regulations signal heightened liability risk

What happens in the EU stays in the EU these days, doesn't it? When it comes to the new EU General Product Liability Directive<sup>1</sup>, that is far from the case.

The General Product Liability Directive came into force on the 9th December 2024 and should be implemented by all EU Member States by 9 December 2026.

Manufacturers, software developers, product distributors and even online retailers must understand the ramifications of this new product safety regulation, which can directly impact their operations. UK exporters to the EU will need to demonstrate compliance, appreciating that the directive applies to both new and modified products, including refurbished goods.

This is a significant expansion of the former 1985 directive, in itself groundbreaking when introduced. The new directive expands the interpretation of a 'product', in legal terms, to encompass software and software updates, AI components and related digital services.<sup>2</sup>

A product is also deemed to include the integrated and interconnected cloud-based services that might operate or update it, whether that is a manufacturing file, a Sat Nav update or a digital service supporting a health monitor.<sup>3</sup> This allows the new directive to control product safety within the increasingly digital and AI-driven world.

### Consumer rights' enhancements

The EU directive also addresses issues consumers have faced when seeking product liability redress due to the complexity of modern supply chains. It grants considerably enhanced rights to consumers, who had already enjoyed the no-fault approach of the previous directive when seeking compensation.

The burden of proof now firmly rests with manufacturers, not the consumer.<sup>4</sup> Manufacturers need to disprove the claim, and claimants merely have to provide, "facts and evidence to support the plausibility of the claim for compensation."<sup>5</sup>

A product will be deemed defective if it does not provide the safety that the average person expects. A product will similarly be considered automatically defective if it fails to meet the safety requirements of national regulators.<sup>6</sup> Absolute proof that a defect caused injury or loss is not required. If there is a likelihood a defect led to the claim, the consumer is likely to win.

Furthermore, the product will be deemed defective if it compromises safety through a cybersecurity vulnerability. That does not have to be from the outset but could emerge during the product lifetime.

Any person can bring a claim, whether they own the product or are simply impacted by it. A claim could be lodged for death, personal injury, or property damage, but also for personal data destruction or corruption. Most importantly, the new directive also allows claims for medically recognised psychological injury.

Claimants have three years to lodge a claim, and liability exists on the manufacturer or supplier's side, for 10 years after the product reached the market. In some cases, that can be extended to 25 years.<sup>6a</sup> Whereas, previously, there was a minimum threshold to be met for a claim, that has been removed. More trivial claims could now be pursued.

1. [https://single-market-economy.ec.europa.eu/single-market/goods/free-movement-sectors/liability-defective-products\\_en](https://single-market-economy.ec.europa.eu/single-market/goods/free-movement-sectors/liability-defective-products_en)

2. <https://www.shoosmiths.com/insights/articles/the-new-eu-product-liability-directive>

3. <https://www.goodwinlaw.com/en/insights/publications/2025/02/alerts-practices-aim-eu-updates-its-product-liability-regime>

4. <https://www.weightmans.com/media-centre/news/eu-product-liability-reform-what-are-the-implications-for-the-uk/>

5. <https://www.clydeco.com/en/insights/2024/11/navigating-the-new-eu-product-liability-directive>

6. <https://www.mccannfitzgerald.com/knowledge/product-liability/the-new-eu-product-liability-directive-key-changes-and-implications-for-the-life-sciences-sector>

6a. <https://www.hendersonchambers.co.uk/wp-content/uploads/2024/11/2024.11.19-Alerter-by-Prashant-Popat-KC-George-Mallet-Freya-Foster-Proposed-EU-directive-on-liability-for-defective-products.pdf>

## Assessing liability

An EU manufacturer will be adjudged to have primary liability, but if there is no EU manufacturer involved, another party in the supply chain can be declared liable. If a distributor does not provide manufacturer details within a month, compensation can be claimed from them. There remains no maximum limit on liability claims.

Defending a claim will require the defendant to categorically prove the product was not defective. Here, manufacturers must demonstrate robust regulatory compliance with both EU and UK safety standards and have immediate access to quality control and testing reports. Clear product instructions should be provided, to try to prevent consumer misuse.

Manufacturers should carry out a thorough supply chain audit, focusing on safety compliance. Transparency is vital, and all records including AI decision-making, need to be kept. Contracts with third-party components' manufacturers should be reviewed, to tighten up on respective liabilities. It is likely product recalls will influence the claims assessment process, so instigating watertight procedures, to reduce these matters.

Insurers are likely to ask questions about measures taken, with the risk to some businesses raised and the ease of consumers engaging in litigation considerably higher.

## UK law

This regulation, although currently an EU directive, could be mirrored in the UK within a relatively short time frame. The King's Speech of July 17, 2024, highlighted the Product Safety and Metrology Bill, and product liability regulation along the lines of the EU directive could accompany this.<sup>7</sup> The time to start planning for this is now.

Should you need help with your risk management or need to establish whether your insurer will alter their view of your risk in light of the new directive, please contact your broker.

7. <https://kennedyslaw.com/en/thought-leadership/article/2024/the-king-s-speech-2024-the-product-safety-and-metrology-bill-same-same-but-different/>







## Grenfell lessons continue to influence fire regulations

Lessons from 2017's Grenfell Tower tragedy continue to influence fire regulation reforms. Key regulatory changes have been introduced since and there are other significant regulations with which to comply this year and next. So, are you aware of all of your obligations?

The UK Fire Act 2021, enhanced fire safety within multi-occupied residential buildings of two or more sets or premises.<sup>1</sup> This Act both clarified and extended the scope of the Regulatory Reform (Fire Safety) Order (FSO) of 2005, the main piece of legislation governing fire safety in buildings in England and Wales.<sup>2</sup>

It created the requirement for a Responsible Person (RP), typically the building owner or manager, to take charge of fire safety. Responsible Persons became accountable for safety in communal areas within such properties, but also for the

structure, external walls, including cladding and balconies, and individual flat entrance doors.

### 2022 Fire Safety (England Regulations)

These regulations encompassed recommendations from the Grenfell Tower Inquiry Phase 1. They apply to high-rise residential buildings (over 18 metres), residential buildings with storeys over 11 metres in height and all multi-occupied residential buildings with two or more sets of domestic premises.

These regulations created an obligation for RPs of high-rise flats to better furnish the Fire and Rescue Services with plans and details of buildings' wall systems. A further duty became that of regularly checking firefighting equipment and lifts and promoting fire door safety awareness,<sup>3</sup> whilst also ensuring residents are fully aware of how to report and respond to a fire.<sup>4</sup>

### Further legislation

The 2022 Building Safety Act, and specifically Section 156, further amended the FSO. This became phase three of the Home Office's plan for enhanced safety in higher risk buildings. It extended the requirement to record and share fire safety information to all buildings under the FSO's scope. Ensuring competency in the handling of fire risk assessments also became a requirement.<sup>4a</sup>

2023's Fire Safety Act Addendum provided even more clarification of an RP's role. RPs now have to coordinate fire safety actions with others, should more than one RP control a building. Fire risks must be recorded in full, rather than just noting 'significant' fire risks as previously.<sup>5</sup>

1. <https://www.gov.uk/government/publications/fire-safety-act-2021/fire-safety-act-2021-factsheet-information-on-commencement-of-sections-1-and-3-of-the-fire-safety-act>

2. <https://www.gov.uk/government/collections/fire-safety-legislation-guidance-for-those-with-legal-duties>

3. <https://www.london-fire.gov.uk/safety/property-management/fire-safety-england-regulations-2022/>

4. <https://www.gov.uk/government/publications/check-your-fire-safety-responsibilities-under-the-fire-safety-england-regulations-2022/check-your-fire-safety-responsibilities-under-the-fire-safety-england-regulations-2022>

4a. <https://fireengland.uk/news/new-fire-safety-laws-came-force-1-october-2023>

5. <https://www.dsfire.gov.uk/safety/businesses/fire-safety-law-has-changed>



New roles of Accountable Person and Principal Accountable Person emerged. These 'actors' are responsible for high-risk building registration and safety reporting through the Building Safety Regulator. Fire safety duties remain with the RP.<sup>6</sup>

If a building is sold on, all shared information should be handed to whoever becomes the new duty holders. This creates the 'Golden Thread' — a continual record of the building's fire safety information.<sup>7</sup>

## 2025 regulations

Residential Personal Emergency Evacuation Plans (PEEPS) became a requirement in multi-occupancy buildings as of December 2, 2024. RPs must create a PEEP for any disabled or vulnerable resident requiring tailored assistance in the event of a fire.<sup>8</sup>

On March 2, 2025, it became a legal requirement for all newly constructed care homes in England to have sprinkler systems installed.<sup>9</sup> On the same date, fire safety testing fell into line with European standards, by moving from the British Standard (BS 476), to the European Standard (BS EN 13501) series.<sup>10</sup> Those impacted should familiarise themselves with the new standards and assess how safety protocols and building materials might be affected.

From July 4, 2025, Aqueous Film Forming Foam (AFFF) fire extinguishers, containing perfluorooctanoic acid (PFOA) are completely banned, due to the environmental impacts of the 'forever chemicals' they contain. Businesses and schools should replace foam extinguishers and dispose of banned equipment through accredited disposal companies.<sup>11</sup>

## 2026 legislation

A huge Grenfell milestone will be reached on September 30, 2026. From that date, any new building over 18 metres must have a second, completely separate staircase.<sup>12</sup> This will have implications for asset owners, and some will have to factor in the reduced area available for rental within the overall footprint, due to incorporating a second staircase. A lower return on investment may be the price to be paid for enhanced fire safety within taller properties.<sup>13</sup>

Compliance with all of these regulations may require assistance, according to your role. If you do need help in managing your fire risks, we have brokers who can assist.



6. <https://www.brabners.com/insights/building-safety/building-safety-act-2022-accountable-persons-explained>

7. <https://buildingsafety.campaign.gov.uk/building-safety-regulator-making-buildings-safer/building-safety-regulator-news/understanding-the-golden-thread/>

8. <https://www.thefpa.co.uk/advice-and-guidance/advice-and-guidance-articles/what-is-a-personal-emergency-evacuation-plan->

9. <https://constructionmanagement.co.uk/sprinklers-to-become-mandatory-in-new-care-homes-from-march-2025/>

10. <https://aylesburyfire.co.uk/upcoming-changes-to-fire-extinguisher-regulations>

11. <https://s4s.wandsworth.gov.uk/Article/173707>

12. <https://www.pinsentmasons.com/out-law/news/second-staircases-mandatory-for-new-buildings-england>

13. <https://www3.rics.org/uk/en/journals/built-environment-journal/second-staircases-new-tall-residential-buildings.html#:~:text=Under%20the%20changes%2C%20new%20residential,to%20the%20nearest%20storey%20exit>



## AI: Business risk friend or foe?

The integration of AI tools into business tasks is gathering pace, but is this rapid adoption exposing too many organisations to too much risk?

The answer may well be 'yes'. Many companies have not created AI usage policies.<sup>1</sup> This is despite AI tools now commonly being used by employees, whether to summarise a document, draft reports, carry out research or create social media posts. Whilst adoption is relatively simple, understanding how the tools work is a mystery to many users.

This needs to be quickly addressed. Whilst AI regulation is currently only through EU law, AI usage could breach many existing regulations here in the UK.<sup>2</sup>

### How do AI models work?

Within generative AI, algorithms generate or create an output such as code, data, text or imagery. They do this based on datasets on which they have been trained — never up-to-date in real-time. The output is only as good as the user's input, whether that is a prompt, instruction or a document or data for bot analysis.

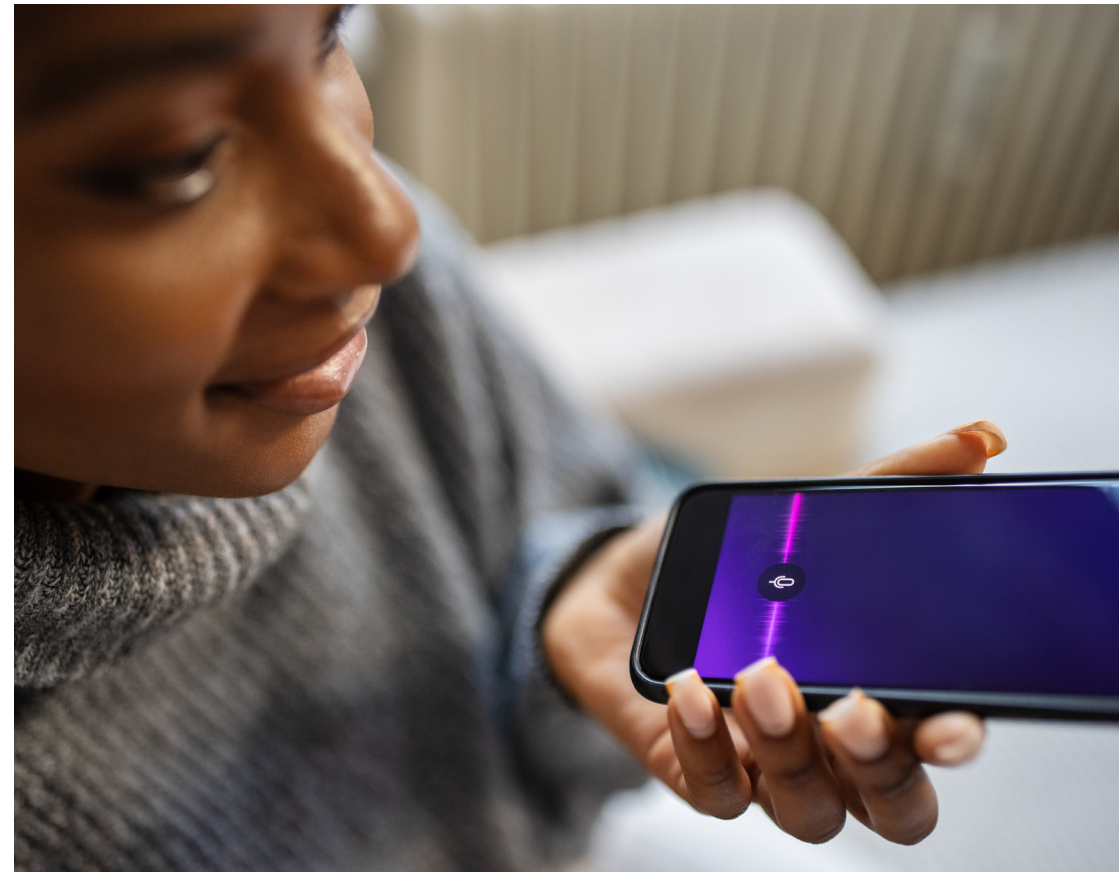
Therein lies a major risk. The AI model can use your material to build its own knowledge and potentially then share it with other users. Your unique insight could easily answer another user's prompt query. Your business plans could be made public. If inputted information contains personal customer details, they could enter the public domain. That would be deemed a GDPR breach.<sup>3</sup> But do employees even know to tick the model's privacy button? Can this be trusted to actually ensure privacy?

### AI and intellectual property

The other danger area is intellectual property and copyright. AI models are trained by collating billions of text files, videos, and photos. Much is protected by Intellectual Property rights, copyright law and trademarks. By simply using information produced as AI bot output, an employee could infringe the owner's rights.

High profile lawsuits are already underway. Disney claims one AI image generator has become "a virtual vending machine, generating endless unauthorised copies of Disney's and Universal's copyrighted works." It points to "a bottomless pit of plagiarism."<sup>4</sup>

Gaining any copyright infringement compensation from an AI provider is highly unlikely if using a free version of the model. A paid version might offer some recompense, but businesses should review the terms and conditions.



1. <https://www.brafton.co.uk/blog/brafton-research-lab/ai-marketing-survey-ai-policies/#:~:text=For%20example%2C%20a%20similar%20study,the%20proper%20use%20of%20AI>

2. <https://www.lawgazette.co.uk/practice-points/ai-regulation-what-uk-businesses-need-to-know/5123086.article>

3. <https://www.osborneclarke.com/what-risks-need-be-considered-business-using-artificial-intelligence>

4. <https://www.mishcon.com/generative-ai-intellectual-property-cases-and-policy-tracker>



### The need for human input

One of the key issues with AI is the over-reliance users place on output. Unless a human verifies material, assesses whether it could infringe copyright and checks the facts, mayhem can result. AI models also contain bias; due to the way they are trained. This can again cause legal issues, should it, for instance, lead to biased decision-making in recruitment.

Reputational damage is a considerable risk accompanying the use of AI models at work, but there are significant time-saving advantages. Adopting AI correctly should mitigate the risks attached. This starts with thorough staff training, encompassing how the tool works, its risks and guidance on intellectual property and copyright laws.

### Putting AI policies in place

A robust AI policy, explaining permitted and non-permitted uses of AI and what an employee is and is not allowed to input, should back this. It should carry a clear data security statement and detail required verification processes. The employer's expectations, in terms of honesty and transparency if an employee uses AI within a task, should be clarified.

As many employees are already using AI, most employers will have to start the risk reduction process by carrying out a thorough AI audit, to assess how and why AI is currently being utilised in the workplace and by whom.

The message is to take a considered approach to AI, rather than rushing to embrace it unprepared. It has an admirable thirst for knowledge acquisition, but if you feed it sensitive or unredacted material, that could come back to haunt you.

And do consider the insurances that could protect you if you find yourself in a legal battle. We have a range of solutions that can be your safety net.





# Preparing for generational rights' upgrades



## Employment laws are undergoing a massive overhaul.

Much of this Bill is not yet law. It is being fast-tracked and, to try to get it onto the statute books, various aspects have been amended or dropped, given a need to make compromises.

A new road map suggests some of the new laws will come into operation in October 2026, whilst others will not be witnessed until 2027.<sup>1</sup>

## Think ahead

Although the exact and finer detail of many proposed changes, such as the day-one right to not be unfairly dismissed, enhanced flexible working rights, a ban on hire and rehire practices and employer liability for harassment by third parties, is not yet known, employers should prepare.

Getting systems in place now, to safeguard the business against falling foul of new regulations makes sense. Working well in advance with an adviser, who can guide policies and practices and establish good working procedures, may be well worth it.

For now, however, it is essential to ensure compliance with changes already introduced. The April 2025 period saw the arrival of various new arrangements of which employers must be aware. One headline-maker has been the increase in both the National Minimum Wage (NMW) and National Living Wage (NLW). Anyone aged 21 and over should now be paid at least £12.21 per hour, and those aged 18 – 20 should earn £10 per hour. For under 18's and apprentices, it is £7.55 per hour.<sup>2</sup>

Double-check your payroll and ensure you are paying these new rates or penalties could be levied. You could also face reputational damage if such a situation became public.

The same diligence should be paid to Statutory Sick Pay (SSP) and statutory payments for maternity, paternity, adoption, shared parental and parental bereavement pay. SSP is now to be paid at a weekly rate of £118.75 (as from April 6, 2025) and other statutory pay at a rate of £187.18<sup>3</sup> per week. Make sure any employee-facing documents reflect these rates and update payroll systems.

## New employee legislation

There are now also statutory leave and pay entitlements for parents of babies born prematurely or receiving extended care in neonatal units. The Neonatal Care (Leave and Pay) Act 2023,<sup>4</sup> effective as from April 6, 2025, could have escaped attention. With so many employment-related regulation and payment changes in such a short space of time, it is easy to have missed some of the newer employer obligations.

Parents with a baby admitted to neonatal care could be eligible for up to 12 weeks of leave,<sup>5</sup> typically added to the end of maternity or paternity leave.<sup>6</sup>

Another under-the-radar regulation arrived on January 20, 2025. Failing to comply with the statutory ACAS Code of Practice on Dismissal and Re-engagement<sup>7</sup> can now result in a 25% uplift in a protective award for workers whose employee terms have been changed during the process.<sup>8</sup>

1. <https://assets.publishing.service.gov.uk/media/686507a33b77477f9da0726e/implementing-the-employment-rights-bill-roadmap.pdf>

2. <https://www.gov.uk/national-minimum-wage-rates>

3. <https://www.osborneclark.com/what-risks-need-be-considered-business-using-artificial-intelligence>

4. <https://www.legislation.gov.uk/ukpga/2023/20>

5. <https://www.acas.org.uk/neonatal-care-leave-and-pay>

6. <https://www.lewissilkin.com/insights/2025/01/23/neonatal-leave-and-pay-the-new-law>

7. <https://www.gov.uk/government/publications/dismissal-and-re-engagement-code-of-practice>

8. <https://www.acas.org.uk/changing-an-employment-contract/advice-for-employees/if-your-employer-proposes-to-dismiss-and-rehire-you>



## Employer action

All of this undoubtedly has both financial and administrative implications for employers. Employee handbooks and company policies need to be brought up to date. New procedures may need to be embedded in the workplace, involving staff and managerial training. Understanding what is now compliant practice is fundamental.

Putting the foundations in place for what is likely to come when the Employment Rights Bill becomes law is a sensible move, allowing a business to better cope with an even greater raft of regulations with which to comply in the near future.

Remember that employment law is a major risk, requiring mitigation through robust compliance. Legal cases can result in significant defence costs, even if your company is not at fault. Protect against these through better HR and operational systems but also the insurance covers that enable a defence to be mounted, by picking up costs but also providing advice. Talk to us today about the options available to you.







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