

NATIONAL PRODUCT SAFETY GROUP.

UK practitioner experts for product safety & compliance.

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Guidance Note on contract office furniture chairs used in the home.

Background.

During the Covid 19 pandemic a number of questions were raised regarding the provision of office furniture - particularly in relation to chairs - by employers to employees for use whilst working at home. The pandemic has seen a significant rise in home working, which has led to concern as to whether these products are safe and compliant to consumer protection (CP) legislation, whilst also raising the question of whether in fact this provision is even within scope of the CP legal Framework.

This scenario is one of National consideration as it would affect employers and the contract furniture industry nationwide; it is not restricted to a local level issue. A working group progressed three scenarios relating to the provision and use of contract furniture chairs in the home in the context CP legislation relevant to Trading Standards in order to assist with a National harmonised approach to guidance and enforcement.

Relevant legislation and guidance considered and reviewed.

- Consumer Protection Act 1987 (CPA)
- Furniture and Furnishings (Fire) (Safety) Regulations 1988 – as amended (FFFR)
- General Product Safety Regulations 2005 (GPSR)
- EU Blue Guide 2016
- Health and Safety at Work Act etc 1974 (HASAWA)
- Provision and Use of Work Equipment Regulations 1998 (PUWER)

Please note: Scenarios 1 & 2 are considered on the expected basis that the contract furniture meets the legal requirements for the contract furniture industry, under the duty to take general fire precautions detailed in the Regulatory Reform (Fire Safety) Order 2005.

1) Provision of Office Furniture - B2B contract supply prior to Covid 19 Pandemic/mass migration to home working - 'Legacy' Chairs

B2B Supply by Manufacturer/Importer/Distributor

Within this scenario it is agreed that there was no intention at the time of this contract supply that the furniture would be used in another environment such as a private dwelling nor by consumers.

Therefore, it would not have been considered to be reasonably foreseeable under this supply that they would be used by consumers in a domestic environment and for that reason they would fall outside the scope of the GPSR and the FFFR.

2) Provision of Office Furniture - B2B contract supply post Covid 19 Pandemic/mass migration to home working

B2B Supply by Manufacturer/Importer/Distributor

Where these chairs were supplied for commercial use in a contract office setting and not for private use in a dwelling after the pandemic began and the extensive increase in home working was recognised, these products will fall outside the scope of the FFR.

However, given that there was knowledge of the advent of widespread home working at the time of this supply, it is our opinion that it was reasonably foreseeable that they could be used by employees in the home. It was also reasonably foreseeable that the chairs would be subject to consumer use (e.g. for non-work purposes) whilst in the home and therefore they would be caught by the GPSR.

3) Provision of Office Furniture (marketed and supplied with the conscious intention or expectation that amongst their intended uses is home working)

Supply by Manufacturer/Importer/Distributor

There is clear intention here that furniture is being supplied for use in the home and at the time of that supply, especially where sold direct to consumers, it cannot be assumed that it is not ordinarily intended for the chair to be subject to private use in a dwelling.

Therefore, this supply is caught by the FFR in respect of upholstered furniture such as chairs.

In light of the above, it is also reasonably foreseeable that the furniture (e.g. chairs) will be subject to consumer use and will therefore also fall within scope of the GPSR.

4) Provision of Office Furniture (chairs) by Employer to employee

The question of whether an employer is a 'distributor' and the provision of office furniture to their employees to use for work at home is a 'supply' as defined within the consumer protection legislation framework was deeply debated and examined.

Following the conclusion of this process, it is considered that the employer to employee provision of office furniture does not constitute a 'supply' for the purposes of the CP legislation. The reasoning for this opinion is as follows:

- In line with the definition of 'supply' in S.46 of the Consumer Protection Act 1987, this provision is not considered to constitute a "selling, hiring out or lending the goods". (S.46(2) would imply that any 'hire' of goods for the purpose of this section is one that is done on the basis of a formal agreement rather than just the employee collecting a chair to use for work at home)
- The provision does not constitute a 'gift' for the purpose of S.46, as it would generally be expected that the chair is given back at some point/returned to the office.
- Rather than this being the provision of furniture to a third party, the employer and employee are part of the same business and therefore the equipment is not changing hands in a legal sense or being transferred out of the business. Therefore, it is considered that the scenario also does not meet the

definition of 'making available' in the Blue Guide ((def. of supply in GPSR is "supply" in relation to a product includes making it available, in the context of providing a service, for use by consumers):

"the making available of a product supposes an offer or an agreement (written or verbal) between two or more legal or natural persons for the transfer of ownership, possession or any other right (47) concerning the product in question after the stage of manufacture has taken place. The transfer does not necessarily require the physical handover of the product. This transfer can be for payment or free of charge, and it can be based on any type of legal instrument. Thus, a transfer of a product is considered to have taken place, for instance, in the circumstances of sale, loan, hire (48), leasing and gift. Transfer of ownership implies that the product is intended to be placed at the disposal of another legal or natural person"

Employers will, however, need to ensure that they are complying with their obligations under Health & Safety legislation, for example the Provision and Use of Work Equipment Regulations 1998. This would fall under the remit of the Health and Safety Executive or Local Authority Environmental Health/Health & Safety departments.

Practical application/Corrective Actions standard approach:

Notwithstanding any requirement to comply with the prescribed testing methods in the FFFR (e.g. chairs marketed and supplied for use in home), it is the responsibility of the manufacturer or importer to ensure that products meet the definition of a 'safe' product in the GPSR. As an alternative to the standards detailed in FFFR, manufacturers/importers may be able to demonstrate an equivalent level of safety through use of standards for contract office furniture, such as BS 7176 and BS EN 1021.

The Furniture Industry Research Association (FIRA) are devising an update to their Contract Furniture Industry Guide with an acceptable minimum 'standard' for the safety of these products in line with any GPSR obligations (i.e. minimum testing requirements and applicable standards).

In offering this advice the NPSG wishes to make clear:

- only a court of law can interpret legislation with authority
- the advice is not intended to be a definitive guide to, or substitute for, the relevant law.
- the advice given is subject to revision in the light of further information
- NPSG advice is independent of the UK government or UK government agencies
- the advice is result of agreement between enforcement duty holders in the UK participating in the NPSG. Where other interested organisations are involved – this is indicated.
- independent legal advice should always be sought - if appropriate.

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