

The Sale of Used Motor Vehicles and the General Product Safety Regulations 2005

Introduction

- If you sell (or hire) previously used motor vehicles you are required by the General Products Safety Regulations 2005 to ensure that they are safe before they are offered for supply.
- These Guidance notes describe the legal provisions, give practical advice on how to comply with them, and answer common questions asked by dealers.

The Law

- The General Product Safety Regulations 2005 require certain products including used cars, to be safe.
- A safe product is any product which under normal or reasonably foreseeable conditions of use including duration and, where applicable, putting into service, installation and maintenance requirements, does not present any risk or only the minimum risks compatible with the products use, considered acceptable and consistent with a high level of protection for the safety and health of persons.
- It is an offence for businesses to supply, offer, expose or possess for supply any unsafe product. The penalty under the 2005 Regulations can be up to £20,000 fine and/or 12 months imprisonment or both.
- Products that comply with an agreed safety standard are deemed to be safe under the regulations.

What safety standards are there for used cars?

- The Road Vehicles (Construction and Use) Regulations 1986 include minimum standards of safety of cars. The most important aspects are covered in the MOT test; in particular, those parts of the test relating to **tyres, lights, brakes, steering, suspension and corrosion**.
- Generally used cars whose condition conforms to MOT test standards are safe for the purposes of the General Product Safety Regulations 2005.

Practical advice on complying with the Regulations.

- Ensure that used cars are up to MOT standards before they are placed on the forecourt for supply. This can be achieved by either submitting the vehicle to a vehicle (MOT) testing station, or (if you or an employee has a good knowledge of vehicle mechanics and MOT standards) by conducting your own checks.
- Complete a pre-sale inspection report as set out in your existing licensing conditions.
- Keep full records of the checks made on vehicles, together with faults identified, corrective action taken, authorisation for placing the vehicle on sale, and relevant training for staff.

The 'Due Diligence' Defence.

- It is a defence for any person charged with an offence under the 2005 Regulations to show that they took all reasonable steps and exercised all due diligence to avoid committing the alleged offence.
- In order to satisfy this defence you should consistently follow the above steps and carry out periodic audits to ensure that your procedures and work instructions are being complied with.

Common Questions Asked by Dealers.

Question: Do all my vehicles have to be MOT'd before they go on sale?

Answer: No. They should be in a condition that is capable of passing MOT standards. Obviously, an MOT testing station can give you the answer to this. So can a person with a good knowledge of vehicle mechanics and MOT standards. Please note however that no vehicle over 3 years old can be used on a road, including test-drives, without an MOT certificate. Trade plates do not discharge you from having to have a car MOT'd when it is driven on the road except in certain circumstances: - **www.gov.uk/getting-an-mot** "You cannot drive your vehicle on the road if the MOT has run out. You can be prosecuted if caught. The only exceptions are to drive it: (1) to or from somewhere to be repaired; (2) to a pre-arranged MOT test"

Question: What about those vehicles that arrive into stock with current MOT certificates?

Answer: Bear in mind that certain defects can emerge within weeks, even days, of the issue of an MOT certificate. So even a car with an 11-month certificate could have defects that would cause an offence to be committed under the General Product Safety Regulations 2005. We advise that you adopt a routine of checking every vehicle, regardless of any accompanying MOT certificate.

Question: I always put a full 12-month MOT on my vehicles for my customers before they take delivery. Isn't that enough?

Answer: Cars must be safe when offered for supply and that includes being made available for a test drive. Regardless of whether you put a 12-month MOT on the vehicles for your customers, you should carry out checks before they are put on the forecourt for sale.

Question: If I put "Awaiting Preparation" or something similar on the windscreen will I avoid liability if a vehicle is found to be unsafe?

Answer: No. If it is on your forecourt with a price it is considered to be offered for supply and must comply with the General Product Safety Regulations 2005.

Question: What powers do Trading Standards have to examine my vehicles?

Answer: They may enter your premises at all reasonable times to check that the 2005 Regulations are being complied with and inspect any record or product. The regulations confer on an Enforcement Authority (Trading Standards) powers of test purchase, entry and search and seizure and detention of products. This could mean that a vehicle or vehicles found contravening the relevant safety standards could be taken from your premises to be produced as evidence of exposing, offering or possessing for supply a 'Dangerous Product'. The meaning of a 'Dangerous Product' in the 2005 Regulations means a product other than a safe product.

Question: All these checks will involve time and money – are they really necessary?

Answer: Failing to carry out checks will undoubtedly result in unsafe vehicles being offered for sale. Spending over an hour valeting a vehicle but not 10-15 minutes checking that it is safe may find little favour from the courts.

Question: How can I find out more about my legal Obligations?

Answer: By contacting us via the telephone number and address shown. Further information on MOT standards can be found at www.gov.uk/getting-an-mot and www.gov.uk/topic/mot/manuals.

See also www.highland.gov.uk/motortrade and www.businesscompanion.info/en/quick-guides/product-safety/used-car-sales.

This leaflet has prepared for the guidance of traders by The Highland Council. It cannot state the law completely or definitively, and is only intended for guidance. For further guidance, contact, Highland Council Trading Standards, 38 Harbour Road, Inverness IV1 1UF 01463 228700
www.highland.gov.uk/tradingstandards trading.standards@highland.gov.uk

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