

Code of Practice on Vehicle Safety Defects and Recalls

Version Control

Previous versions of this document have been differentiated through issue numbers – up to issue 6 in January 2015. Given the significance of the changes made to this version – which have restructured the whole document, numbering has restarted at v1.0 for the November 2019 issue. Future updates will be signified through numerical updates from that – v1.1 and onwards. Any future significant updates will start go to the next whole version number – v2.0 etc..

If this is a printed copy, for avoidance of doubt the latest version should always be checked as published on gov.uk.

Latest Version	Date of issue	Nature of Update
v1.0	1 st Nov 2019	Redrafted document; replaces all previous issues

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1. What this code covers

1.1. This Code concerns the situation where producers and distributors or the regulator (DVSA) become aware of potential safety defects in products that are available for supply in the UK in respect of all motor vehicles, trailers and their components – as originally sold, fitted or in the aftermarket.

1.2. The code is not an interpretation or reframing of the law. The code is not intended to supplement the legal basis for product safety in the UK – the basis for which is primarily the General Product Safety Regulations (GPSR) – it is intended to set out the practicalities for how product safety, in particular defect and recall management, are to operate in the UK. Inevitably in a concise document there will be scenarios that do not immediately fit exactly with the code – and where that is the case, then discussion between DVSA and those involved should ensure that the spirit of the code is maintained.

1.3. The scope of the code is around safety defects and the management of recall, however the administrative processes set out in the code are also intended to cover any material legislative non-conformity from the Vehicle Type Approval that affects the operation of the product – including its emissions.

2. Summary of key responsibilities

2.1 This section provides a brief summary of key responsibilities that are explained more thoroughly in the following sections. Attention is drawn to the definitions set out at Annexe A – particularly for a producer and distributor.

2.2. DVSA is the government appointed authority in the UK responsible for product safety in the automotive sector. DVSA has responsibilities to monitor and investigate issues that affect automotive product safety. Key responsibilities are:

- Investigating or commissioning producers or distributors to investigate defects reported to it and in assisting them with these investigations by providing information or helping to obtain information;
- determining whether potential safety defects should be considered as safety defects;
- agreeing with producers rectification action and plans to deal with safety defects;
- monitoring producers' actions in managing rectification plans;
- publishing information for consumers to help them understand the process and their responsibilities;
- where necessary, enforcing the requirements of the General Product Safety Regulations with regard to the automotive sector;
- helping producers in making the right decisions around understanding risks and the potential actions that they need to take;
- update the Safety Gate data for UK produced products.

2.3. Producers of vehicles, trailers and components have clear responsibilities for the products that they make available into the UK market. Key responsibilities are:

- monitoring the safety of the product in service, including by investigating problems reported – by DVSA, by users or others
- analysing the potential risks that defects present – using an appropriate risk assessment tool such as the RAPEX Risk Assessment Methodology
- determining whether there is a safety defect and immediately notifying DVSA
- proposing and agreeing with DVSA a course of action to deal with safety defects
- delivering the agreed course of action including the process of notifying users and arranging any rectification works

2.4. Distributors of products also have responsibilities. The key responsibilities for a distributor are in monitoring the safety of the products in the market to ensure that they are safe – which includes passing on any information on potential safety defects to the producer in the first instance (or to DVSA where appropriate) – and for supporting the producer as may be necessary in providing any information to the DVSA, in any recall or similar efforts.

3. Defining a safety defect

3.1. A safety related defect is a failure due to design and/or construction, which is likely to affect the safe operation of the product – and pose a significant risk to the driver, occupants and others.

3.2. A safety defect can be of a physical component or software and could occur at any point in the life of the product. In the case of aftermarket components or accessories the defect may be one of compatibility with a vehicle for which it is promoted.

3.3. Additionally there are several considerations to be made around whether something is concluded to be a safety defect – including the warning given to the user of the impending failure, the effects of routine maintenance and the MOT and the ability of the user to bring the vehicle to a safe stop. These are set out in Annexe B.

3.4. To define something as being a safety defect an investigation – as described in section 4 - must have already been conducted. It is at the point that investigations conclude that a problem or problems are a safety defect that much of the code of practice comes into play – including the legal requirement to notify DVSA and the consideration of options for action.

4. Investigation of potential safety defects

4.1. Producers have a responsibility to investigate reported problems that are potentially safety related (reports) – to determine if there is a safety defect.

4.2. Reports may come from a number of sources, which could include:

- complaints from users;
- warranty or product repair data trends;
- reports from dealerships or other garages;
- defect reports passed on from DVSA or
- component suppliers or other producers.

4.3. The volume of reports and the potential safety risk that the problem could present will be considerations in how investigations are prioritised - including the speed and depth of the investigation. Notwithstanding that, all reports should be investigated to ensure that safety defects are not missed.

4.4. Where a producer operates to a recognised quality management system, then the investigation would be expected to be in line with that system. It would be expected that any investigation would include the following:

- understanding the root cause of the reported problem,
- understanding whether that root cause is one of maintenance, product modification or original product design or manufacture,
- assessment as to what if any defect there is and its effect on safety and likelihood of further instances occurring (see defining a safety defect, above) and

Where relevant an investigation should include comparison with other reported problems – in the UK or, if known, elsewhere – of products fitted with similar components or displaying similar symptoms.

4.5. An investigation can consider potential solutions to the problem – although the priority at this stage must be on understanding if there is a safety defect.

4.6. Records of all investigations should be kept, even if it is initially concluded that this is not a safety issue.

4.7. Where investigation is proving complex (and time-consuming) and if reports are of a high-profile nature (eg. gaining public attention, or likely to because of previous related issues) – producers are encouraged to discuss with DVSA early (and would be expected to do so if a report is received direct from DVSA) – providing whatever information they can, taking account of any commercial sensitivity/confidentiality, even if the investigation has yet to conclude (whilst noting that the legal requirement to notify DVSA is at the point that a safety defect is confirmed as set out in section 6 below).

4.8 DVSA acknowledges that some information provided by the producer or distributor may be commercially sensitive and/or provided in confidence (in particular relating to potential safety defects for which an investigation has not yet concluded). DVSA undertakes to protect any such information it does receive and will not release it into the public domain.

5. Potential safety defects reported to DVSA by users

5.1. DVSA provides a service to enable the public to report defects to DVSA directly. DVSA will generally encourage users to go to producers or distributors in the first instance. This section 5 covers potential safety defects that are reported to DVSA by users

5.2. For reports received by DVSA, a brief analysis will be conducted by DVSA (which could involve seeking additional information from the reporter). Should a reported defect or defects appear to be a potential safety defect, then this will be passed to the producer or distributor for investigation.

5.3. Where there is a multi-stage build then DVSA will pass the report to the party it believes likely to be responsible. It may be that other parties may need to be involved or the investigation passed to those parties once the potential defect is better understood.

5.4. The investigation, should be as described in section 4. During the investigation, close contact between the DVSA and the producer should be maintained and regular reviews will take place – typically monthly.

5.5. The producer should keep DVSA updated on progress, providing evidential and statistical information as is warranted by the investigation. Producers should respond to DVSA in full as soon as possible, normally within 28 days. Where it is not possible to reply in full within that time – because of the necessary length of an investigation or testing needed, or the need to involve a remote producer – then this should be explained to DVSA early and feedback given so the reporter can be updated. However, investigations must be expedited in line with the potential risk that is being considered.

5.6. The producer will ensure that all tests and evaluations necessary to reach a conclusion are undertaken and that they provide DVSA with a full evaluation and a conclusion to the investigation.

5.7. Once the investigation has been concluded DVSA will provide a response to the reporter and explain the conclusion that DVSA have come to and, where possible, advise of any next steps. At this point DVSA will also update the producer on these conclusions – this normally being within 28 days of them having provided information to DVSA.

5.8. DVSA acknowledges that some of the information relating to an investigation may be commercially sensitive and/or provided in confidence and information of this nature will not be released.

6. Notification to DVSA of safety defects

6.1. Where a producer or distributor is aware of a safety defect with a product there is an obligation to notify DVSA. This notification must take place as soon as the safety defect has been confirmed (notwithstanding paragraph 4.7. and noting the definition of a safety defect set out in section 3).

6.2. This 'confirmation' will be after the investigation (see section 4) and is the point at which the producer or distributor determines that there is a known safety defect (as defined in section 3). It is understood that several instances of the problem may have been identified and investigated to enable that confirmation. It is also understood that for large multi-national organisations that this 'confirmation' process may occur outside of the UK, and be based on inputs from multiple countries.

6.3. The notification should, where possible, contain the following.

- the make and model of the product(s) including what 3rd party components may be involved,
- a description of the defect and estimated number of units involved and
- the effect, with regard to safety, of the defect.

6.4. Whilst a rectification plan (fix) may have been identified, it is not necessary to wait until one is available for this notification. It is understood that the information provided may not be complete, however this brief notification ensures that DVSA are aware of the issue at the earliest stage (which then complies with Part 2, section 9 of the GPSR) and enables consideration of mitigating actions that may need to be communicated to the user.

6.5. Where producers or distributors are aware of safety defects affecting products outside of the UK which may attract attention or could affect the UK market it would be helpful if DVSA could be informed. In particular it is helpful to understand the nature of the defect and the remedy along with – if relevant - a brief explanation as to why the recall is not to be conducted in the UK.

6.6. Where DVSA are notified of a safety defect that involves a third party component supplier, the notification should provide detail on who the supplier of that component is. If the producer is aware of the use of that component by other producers then it would be helpful to make DVSA aware of that. DVSA will follow-up with the third party supplier to determine if faults seen originally may be found elsewhere. Should that not be possible for any reason, then all relevant producers (who may or may not use the component) will be alerted by DVSA to the potential issue.

7. Agreeing action

7.1. When DVSA is notified by a producer or distributor of a safety defect, it will be expected that a risk assessment of the potential safety defect will be conducted using an appropriate risk assessment tool such as the RAPEX Risk Assessment Methodology – and that will be shared with DVSA if necessary. This risk assessment must consider severity and the following aspects:

- i) The effect that the defect has on the control and operation of the vehicle
- ii) The potential risk to the vehicle occupants and others
- iii) Any specific risks to vulnerable groups – such as children or the elderly
- iv) The likelihood of occurrence.

7.2. Once it is concluded there is a safety defect it is the responsibility of the producer and/or distributor to implement measures to remove the risk and/or to minimise its effect. This may include a recall, but could include other action (see below).

7.3. The responsibility for remedial action lies with the producer (with whom the distributor has a responsibility to co-operate) , but DVSA will either agree the plan or propose a refinement of that plan under the responsibilities given to them by the GPSR. As part of this discussion, the plan should include actions for products that are in use, and also, where appropriate, products still in production or for sale. The normal expectation would be for all safety recalls to be rectified prior to delivery of products.

7.4. There are a number of options for action that producers can take depending on the agreed and identified risks of a safety defect.

Action	Risk type
Safety Recall (Stop Drive)	The definition of a safety defect is met, and there is an immediate threat to safety so the vehicle must not be driven.
Safety Recall	The definition of a safety defect is met, but the threat is not immediate or can be mitigated with 'reasonable' consumer action
Consumer / Garage Warning	The definition of a safety defect is met, but can be adequately mitigated through vehicle maintenance or similar checks. May be used with a recall.
Amendment to maintenance / servicing requirements	Used where a 'reasonable' change to maintenance or servicing requirements can detect a potential problem and avoid the defect. Not usually used in isolation due to communication challenges.

7.5. A safety recall will involve the producer/distributor putting in place a plan to remove or substantially mitigate the risk that the safety defect presents. Typically a safety recall will either result in repair of a vehicle, inspection to determine if repair is needed or a ‘buy back’ of the product to remove it from use.

7.6. Whilst amendments to maintenance/servicing requirements can be used and will be considered a best practice as part of a rectification plan, it would be unusual for this mitigation to be used in isolation. Where changes to maintenance/servicing requirements are used in this way, then consideration must be considered to the ‘reasonableness’ of any change (it needs to be likely that users of the vehicle will follow the new requirements) and how users will be informed – particularly with regard to changes of ownership in the future.

7.7. Any plan for rectification should consider the practicalities for the consumer, and the need to make completion of a recall attractive to the consumer. It also needs to focus on how to plan for rectification as quickly as possible. Imagination in how this is delivered is encouraged – including supplementing the dealer network where this is a constraint to swift completion, or making completion attractive to the consumer.

7.8. For completeness, it is also noted that the following actions are available for situations where the criteria of a safety defect are not met:

Non-safety Recall (non-code action)	Does not meet the criteria for safety; however it would be in the customer’s interest to have the work completed.
Service Campaign (no recall)	There is no safety risk, and it is not deemed to be in the interests of all users of the vehicle.

7.9. These options may form part of discussions with DVSA when defects are considered that do not meet the safety defect definition. In practical terms a Non-safety Recall shares all the characteristics that a safety recall would, less (with the exception of emissions recalls – see section 14) the reporting and monitoring requirements that would apply to a safety defect. A service campaign has no involvement from DVSA and would typically be something a producer would manage through a dealer network.

8. Keeping users informed

8.1. Where a safety defect has been confirmed and some follow-up action – typically a recall - is to be conducted, then consideration needs to be given as to whether to warn users of the product about the safety issue. This is particularly important when the rectification action may take some time and there is action the user can take to minimise risk of the defect manifesting itself or of minimising its consequences. However, it is noted that this can cause some concern for users –

so where possible, any such warnings should be combined with the 'call to action' for a recall. The approach to issuing a warning letter (or not) would be expected to be cleared with DVSA and, where agreed necessary, access to DVLA data will be provided.

8.2. Producers or distributors will notify the user of the details of the safety recall on their product – as a 'call to action'. DVSA must be given the opportunity to comment on the content of the communication prior to instigating a safety recall – and this will be done upon receipt.

8.3. A number of communications may be necessary to ensure that the message has been received and understood by the user. A provisional plan will be agreed with DVSA as part of the notification process with DVSA, but this will need to be reviewed in light of experience on response rates. Assuming that response rates are broadly in line with the agreed plan, it would be expected 3 notifications per motorist would be seen as reasonable.

8.4. Where the recall involves large numbers of products or the remedy is extensive or dependent on a limited parts supply the recall may be phased, however, this must be agreed with DVSA. Any phasing should be based on an understanding of risk across a product range – including its usage profile.

8.5. Whilst it is expected that a producer or distributor will have an agreed and planned programme of recall, products will sometimes be encountered at their dealers outside of that plan. Where that occurs it would normally be expected that recall work should be done. However, if that is not possible the opportunity should be taken to brief the customer on mitigation and to plan future arrangements for the recall work.

8.6. Producers or distributors may request the assistance of DVLA to locate names and addresses of the registered keepers of affected vehicles. The use of this data will be subject to data protection requirements and contractual arrangements with DVLA. DVSA will continue to work with DVLA to improve the quality of data provided.

8.7. Once the programme of notifications has been completed, action for the remaining products can be discussed with DVSA. Where there are 'hard to get to' users, DVSA branded / signed communication to users may be considered. Other considerations could include non-English language communications, social media or other campaigns.

8.8. User responsibilities are described in DVSA's publically available guidance. DVSA will continually aim to raise the profile of and improve information available to consumers to ensure that it provides clear information in the best ways, including clearly showing the responsibility that the user has for acting upon advice in warning letters and arranging for recall action to be conducted.

8.9. Producers and distributors should take all reasonable steps to locate and rectify products. This will include traditional means (such as letters to registered keepers and advertising), but may also include social media and similar. Producers and distributors are encouraged to be innovative

in how they encourage take up of recall programmes through minimising inconvenience for their customers.

8.10. In all of the above, it is noted that registered keeper detail will not always be available – for example for trailers or some components. In such cases DVSA will work with producers and distributors to help support any alternative methods of contact identification.

9. Where there isn't agreement

9.1. Generally it is expected that this code will provide a framework that enables DVSA, producers and distributors to work effectively together to ensure that vehicles, trailers and their components are as safe as possible.

9.2. However, on occasion DVSA may not agree with the producer/distributor about whether something should be considered a safety defect and the action that should be taken. Should that be the case the GPSR provide mechanisms for issues to be progressed.

10. Publishing information

10.1. All safety recalls will be published on gov.uk – at least as a list of recalled vehicle and component types. In addition, all recalls are available publically monthly for those signing up to alerts. DVSA will continue to improve these services to best meet public and trade expectations, in particular to improve take-up of recalls.

10.2. DVSA will not publish or disclose information – such as technical details of a vehicle provided as part of reporting on an investigation into a potential safety defect – that are provided in confidence or are flagged as being commercially sensitive. Where possible producers are encouraged to share their findings, so others can learn from potential problems – and this could be through trade bodies including the SMMT, engineering conferences or similar.

10.3. It would be expected that producers or distributors will also publish useful information themselves (for example on their own websites) to enable motorists and traders to determine whether a product is affected, and include any information on mitigating actions.

11. Monitoring and closure

11.1. Producers or distributors will notify DVSA of the response rate at three monthly intervals, until the recall is complete or it is agreed by DVSA that the campaign be closed for reporting purposes. For 'high profile' cases, DVSA and the producer or distributor may agree that more

frequent reporting will better enable the situation to be managed – and this will be agreed on a case by case basis.

11.2. A recall is considered to be closed for reporting purposes when the producer can show that a high proportion of products believed to be in service have been rectified and the remaining safety risk is low. For registered vehicles that would normally be 90%. The DVSA – with input from the producer or distributor - may adjust the completion rate for recall closure (to a level lower or higher than 90%), taking into account relevant factors such as the age of the vehicles affected and the quality of the owner data available. It is noted that whilst a recall would be closed for reporting purposes the recall is still in place, and producers or distributors are still expected to act upon it should a product be presented, even though active management of the recall may have ceased. Details of these recalls would still appear on published information by DVSA.

11.3. On some occasions producers will find that the original scope of products affected by the defect was not correct. This may be following further investigations, but could be due to complexities of interpreting changing data on the number of products in the market. Where material change to this scope is discovered, DVSA should be notified so all records and published information reflect the best view of reality.

12. Imports

12.1 In the case of a potential safety defect affecting products imported by an independent importer (grey imports), that importer shall bear the responsibilities of the producer as specified in this Code.

12.2. If the independent importer is not available to undertake this obligation, then DVSA will, where relevant, contact the producer and/or distributor of the affected products.

12.3. This code will also apply to products that have been personally imported.

13. Exports

13.1. The Code does not cover exported products. Measures to be taken in relation to these will depend upon the legal and administrative arrangements prevailing in the country of import.

13.2. However where the distributor or producer is aware that products they have produced are outside of the UK market they are responsible to ensure the recall is notified through the Safety Gate system. This can be through the home producing country or through notification to DVSA.

14. Emissions and other compliance

14.1. Whilst the focus and scope of the code is around safety defects, the administrative process set out in the code should be followed for any material legislative non-conformity from the Type Approval that affects the operation of the product – including its emissions. Any such non-conformity is not a safety defect (it will actually be a ‘Non-safety Recall’ as set out in section 7), but will be treated administratively in the same way as a safety defect.

14.2. In particular the administrative processes that will apply to a Non-safety Recall should be:

- agreement of plan with DVSA of the programme for rectification (noting that the technical details of the rectification may be agreed with the original type approval authority);
- provision to DVSA of monitoring data – on rectification rates (as set out in section 11) and
- the publishing of recalls on gov.uk by DVSA.

Annexe A Definitions

Distributor: As defined in the General Product Safety Regulations. In this context this could typically be an importer, dealer, wholesaler or other seller of the product.

Driver and Vehicle Licensing Agency (DVLA): The government agency that manages the vehicle keeper information for all registered vehicles in the UK.

Driver and Vehicle Standards Agency (DVSA): The government ‘**Authority**’ responsible for a wide range of services including the management of the safety recall scheme in the UK.

General Product Safety Regulations 2005 (GPSR): The UK product safety legislation

Manufacturers’ Guide to Recalls: A document that provides guidance on the implementation of a safety recall, that will be considered to supplement this code of practice

Producer: As defined in the General Product Safety Regulations. (In many cases the producer will have a UK based representative or agent that can be considered to act for and be the focal point for consumers and the DVSA to liaise with the producer).

Products: Generic term used throughout the document to refer to vehicles, trailers or components for vehicles or trailers (as originally fitted or available on the aftermarket).

RAPEX Risk Assessment Methodology: The methodology set out in the risk assessment guidelines for consumer products within the Guidelines for the Management of the EU Rapid Information System ‘Rapex’, EU Implementing Decision EU 2019/417 of 8 November 2018

Recall: The action taken when a defect is identified which meets the definition of a safety defect as described in section 3 of this Code

Safety Gate: The European Union rapid alert system (formerly and often known as RAPEX) that enables the quick exchange of information between EU/EEA member states and the European Commission about dangerous non-food products posing a risk to health and safety of consumers.

Type Approval Authority: According to the definition of “approval authority” given in the framework legislation 2007/46/EC or (EU) 2018/858

User: The end user of the product – in this context, typically may be one or all of the following: the motorist, vehicle operator, registered keeper and/or owner.

Vehicle Type Approval: Approval granted according to the framework legislation 2007/46/EC as amended or (EU) 2018/858 as amended

Annexe B Examples to assist in understanding what is and isn't a safety defect

From the base definition in section 3, the following considerations may help determine whether the risk posed is sufficient to consider the issue as a safety defect that requires management. These are not intended as a complete definition or explanation of all situations, but are examples derived from real world experiences where there has been confusion on what is reasonable. Each situation will depend on its own set of unique circumstances, for which a risk assessment process will help systematic analysis – these examples are presented to help steer discussion and thinking to get the right safety outcome.

- **Presumption of Conformity** – GPSR sets out a presumption that if a product meets required standards – type approval – then it is assumed safe, unless evidence shows otherwise. This is helpful – in that type approval covers the majority of systems on a vehicle, and evidence of type approval is an important part of any consideration. However, evidence can show that a conformant product is still dangerous – be that because of something outside of the approval caused by a failure and/or because of compelling evidence – such as accident data. A specific example often discussed is failure of power assisted steering. This presumption of conformity means that (because the vehicle will have been tested to meet the type approval standards for steering effort with the assistance system off/failed) it would be presumed to be safe – unless there is compelling evidence (such as accident data) that it is not.
- **Prior warning** – early warning of a defect may be considered sufficient to mean that it is not treated as a safety defect. However, any such warnings provided to the driver must be clear so it cannot be misunderstood, must be of sufficient magnitude to indicate the severity of the impending defect and provide sufficient time to be acted upon to avoid the effect of the defect. That prior warning may be a designed warning (eg. a warning light) or a physical manifestation (eg. a noise or vibration) clearly evident when driving the vehicle.
- **Failure of electronic ‘driver assist’ systems** – In themselves non-functioning of such systems would not normally be considered as a safety defect, as they are just there to assist actions the driver should be taking, but as driver behaviours change over time, consideration will need to be given on accepted practice for their use. However, should they malfunction in a way that does adversely affect control of the vehicle or cause unpredictable actions (such as very rapid deceleration – particularly if this is without brake lights showing) which may affect other road users then they may be considered as a safety defect.
- **Maintenance and servicing** – where a defect would have been picked up (and rectified) in its early stages as a part of normal vehicle servicing (in line with reasonable manufacturers’ instruction) or the annual MOT (for vehicles of that age), this could be considered as reasonable mitigation for something not being considered a safety defect.

- **Loss of Power** - Where defects result in loss of power to a vehicle, and the vehicle would deaccelerate at no greater rate as if the driver took his foot off the accelerator, this would not normally be considered a safety defect in itself. However, care must be taken to understand that for it not to be considered a safety defect the driver must be still able to control the vehicle and lights and other warning systems must still function.