

Construction Products Regulation and Brexit Update

Leaving the EU with a deal remains the Government's top priority, however the government has accelerated no deal exit preparations. It has commenced to publish draft legislation - most notably the Product Safety and Metrology etc (Amendment etc) (EU Exit) Regulations - and the implications for Approved Bodies and Manufacturers are becoming clearer.

The Government recently published [Guidance](#) to support manufacturers of products covered by the CPR, the key elements of which we summarise here.

Before 29 March 2019

In essence there is no change in the compliance pathway before the 29th March - it is business as we know it. Any products placed on the UK or EU-27 markets before that date must have a CE mark on them if appropriate.

After March 2019 if there's no deal

Goods legitimately affixed with CE marking already on the UK market before the UK leaves the EU on 29 March 2019 will be able to continue to circulate in the UK.

Additionally, goods which are made and assessed against EU harmonised standards and legitimately carry the CE marking can continue to be placed on the UK market for a time limited period provided that they are still fully compliant ie this includes that they:

- be covered by an EU harmonised standard which is the same as a UK designated standard (as noted above, immediately following exit these will be identical)
- are affixed with CE marking
- be accompanied by a manufacturer's declaration of performance
- have been assessed by an EU-recognised notified body, where third party assessment is required

Notified bodies operating under the CPR and based in the UK will be granted new UK 'approved body' status and listed on a new UK database. Approved bodies will be able to undertake conformity assessment activity for UK designated standards. Where an approved body has undertaken the assessment, the manufacturer (or their authorised representative) must affix UK marking. Rules around affixing the new UK conformity marking will remain the same as current CE marking. Where a UK notified body (which becomes a UK approved body after exit day) has carried out tasks or issued certification in relation to the AVCP for that product before exit day, those tasks and/or that certification may be used to support affixing of UK marking where the product is placed on the UK market after exit day.

Manufacturers will not need to use the new UK mark if they have complied with the EU requirements and affixed CE marking, having had any required third-party conformity assessment activity undertaken by an EU recognised notified body. As set out above, it is intended that these arrangements will be for a time limited period and will allow for time to transition to the new UKCA mark.

After this "time period" **all** products placed on the UK market that currently require a Notified Body will need certification by a UK Approved Body. UK Notified Bodies will automatically transfer to become Approved Bodies if they so wish, and the current hope is that they will retain their 4 digit identifier - but this has to be confirmed.

UK manufacturers exporting to the EU

In a no deal scenario it will be a matter for the European Commission to determine the arrangements for products on the EU market from the date that the UK leaves the EU.

The European Commission stated early on that from the withdrawal date from the withdrawal date, UK Notified Bodies will lose their status as EU Notified Bodies and will be removed from the Commission's information system on notified organisations (NANDO). In terms of the effect of this, the notice advised that:

Where economic operators hold certificates issued by a UK Notified Body prior to the withdrawal date and plan to continue placing the product concerned on the EU-27 market as from the withdrawal date, they are advised to consider either applying for a new certificate issued by an EU-27 Notified Body or arranging for a transfer – on the basis of a contractual arrangement between the manufacturer, the UK Notified Body, and the EU27 Notified Body - of the file and the corresponding certificate from the UK Notified Body to an EU-27 Notified Body, which would then take over the responsibility for that certificate.

If your current UK Notified Body does not have a back to back relationship with a Notified Body in the EU27 then please contact Kiwa and we will do our utmost to support during this difficult time.

In summary

Manufacturers placing products on the UK market should note:

- Where the European harmonised standard and the UK designated standard are the same, if the EU requirements are met (including CE marking) the product can continue to be placed on the UK market without any need for reassessment or re-marking. This includes that any third-party conformity assessment be carried out by an EU-recognised notified body. This will apply for a time-limited period and sufficient notice will be given to businesses before that period ends.
- Products that meet UK requirements and bear a UK conformity marking can be placed on the UK market. For those products, any third-party assessment must have been carried out by a UK-recognised conformity assessment body.

- UK-based notified bodies will become UK approved bodies and will be listed on a new UK database

Distributors who bring products in from the EU to the UK will in most cases now be classified as 'importers' bringing in products to the UK from a third country. This change in status will bring new obligations such as a requirement for importers to label their products with their name and address, they must ensure that the AVCP has been carried out by the manufacturer; that the manufacturer has drawn up the technical documentation; that the product bears the conformity marking; and that the manufacturer has complied with their labelling obligations. They also have an obligation to only place products on the market that do comply - if they doubt whether compliance is still valid they should stop placing products on the market.

Manufacturers placing products on the EU market should note:

- In the event of a No Deal Brexit then manufacturers who want to continue to affix a CE Mark will require re-certification by an EU27 Notified Body. If this involves transfer from a UK based Notified Body, the transfer will be on the basis of a contractual arrangement between the manufacturer, the UK Notified Body, and the EU Notified Body.
- In the above scenario, the product would need to be re-marked with the new EU-recognised notified body's four-digit number.
- Note also that products must be placed on the EU market by a legal entity established in the EU, and UK manufacturers will be required to work with an EU-based importer or distributor.
- UK based Authorised Representatives will no longer be recognised under EU law after the 29th March if there is no Deal Brexit and so will need a new Authorised representative based in an EU27 Country.