

SCHEDULE 1

Regulation 3

Amendments to the 2011 Regulation

PART 1

Introductory provision

1. The 2011 Regulation is amended in accordance with paragraphs 2 to 69 of this Schedule.

PART 2

Amendments to Chapter 1

Amendment to Article 1

2. In Article 1 (subject matter), for “CE” substitute “UK”.

Amendments to Article 2

- 3.—(1) Article 2 (definitions) is amended as follows.

- (2) After paragraph 9, insert—

“**9A.** ‘relevant enactment’ means any retained EU law which is derived from an EU instrument issued before exit day harmonising the conditions for the marketing of products in the EU;

9B. ‘the EU Construction Products Regulation’ means Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council [Directive 89/106/EEC](#)(1) as it has effect in EU law as amended from time to time;”

- (3) In paragraph 10—

- (a) for “harmonised”, in the second place it occurs, substitute “designated”;
- (b) for “European” substitute “UK”.

- (4) After paragraph 10, insert—

“**10A.** ‘designated standard’ means a standard which is or becomes designated under Article 18B;

10B. ‘standardisation mandate’ means a request to prepare a standard for the purposes of this Regulation;

10C. ‘recognised standardisation body’ means the British Standards Institution or such other body as the Secretary of State may, in addition, by notice in writing recognise as a standardisation body for the purposes of this Regulation;

10D. ‘coexistence period’ means the period during which a manufacturer may choose to use a designated standard to make a declaration of performance for a construction product covered by it;”

- (5) For paragraph 11, substitute—

(1) OJ L 88, 4.4.2011, p. 5–43.

“11. ‘harmonised standard’ means a standard adopted by a European standardisation body, on the basis of a request issued by the European Commission;

11A. ‘European standardisation body’ means a body listed in Annex 1 to Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives [89/686/EEC](#) and [93/15/EEC](#) and Directives [94/9/EC](#), [94/25/EC](#), [95/16/EC](#), [97/23/EC](#), [98/34/EC](#), [2004/22/EC](#), [2007/23/EC](#), [2009/23/EC](#) and [2009/105/EC](#) of the European Parliament and of the Council and repealing Council [Decision 87/95/EEC](#) and Decision No [1673/2006/EC](#) of the European Parliament and of the Council⁽²⁾ as it has effect in EU law as amended from time to time;”.

(6) Omit paragraphs 12 and 13.

(7) After paragraph 13 (omitted by sub-paragraph (6)), insert—

“13A. ‘TAB’ has the meaning given to it in Article 29(1) (designation, monitoring and evaluation of TABs);

13B. ‘responsible TAB’ means the TAB which receives the request from the manufacturer to issue the UK Technical Assessment;

13C. ‘relevant TAB’ means any TAB which is designated by the Secretary of State for the product area in question;

13D. ‘UK Assessment Document’ means a document adopted by the responsible TAB for the purpose of issuing UK Technical Assessments;

13E. ‘UK Technical Assessment’ means the documented assessment of the performance of a construction product, in relation to its essential characteristics, in accordance with the respective UK Assessment Document;

13F. ‘pre-exit European Assessment Document’ means:

- (a) a European Assessment Document for which:
 - (i) a reference was published in the Official Journal of the European Union under Article 22 as it had effect immediately before exit day; and
 - (ii) the reference was not removed from publication before exit day; or
- (b) guidelines published before 1 July 2013 under Article 11 of Council [Directive 89/106/EEC](#) of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products⁽³⁾ which, immediately before exit day, could be used for the purposes of issuing European Technical Assessments under this Regulation;”.

(8) In paragraph 15, for “harmonised” substitute “designated”.

(9) In paragraphs 16 and 17, for “Union” substitute “United Kingdom”.

(10) After paragraph 17, insert—

“17A. ‘RAMS’ means Regulation [\(EC\) No 765/2008](#) of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation [\(EEC\) No 339/93](#);

17B. ‘UK marking’ means the marking in the form published in accordance with Article 30(1) of RAMS;

(2) OJ L 316, 14.11.2012, p. 12–33.

(3) OJ L 40, 11.2.1989, p. 12–26. [Directive 89/106/EEC](#) was repealed by Article 65 of Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products. Article 66(3) of Regulation (EU) No 305/2011, as it has effect in EU law, provides that guidelines for European technical approval published before 1 July 2013 in accordance with Article 11 of [Directive 89/106/EEC](#) may be used as European Assessment Documents.

17C. ‘CE marking’ means the marking presented in Annex 2 to Regulation (EC) No 765/2008 of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93⁽⁴⁾ as it has effect in EU law as amended from time to time;

17D. ‘competent authority’ has the meaning prescribed by the Construction Products Regulations 2013;”.

(11) In paragraph 21—

- (a) for “Union”, in both places it occurs, substitute “United Kingdom”;
- (b) omit “third”;
- (c) after “country” insert “outside of the United Kingdom”.

(12) For paragraph 22, substitute—

“**22.** ‘authorised representative’ means—

- (a) a person who—
 - (i) immediately before exit day was established in the United Kingdom or a member State and has received a written mandate from a manufacturer to perform specified tasks, in accordance with Article 12 as it had effect immediately before exit day; and
 - (ii) on or after exit day continues to be so established and mandated to act on the manufacturer’s behalf in relation to those tasks; or
- (b) a person who on or after exit day is appointed in accordance with Article 12;

22A. ‘approved body’ has the meaning given to it in Article 39A (approved bodies);

22B. ‘notified body’ means a body—

- (a) which the Secretary of State had before exit day notified to the European Commission and the member States, in accordance with Article 39 as it had effect immediately before exit day; and
- (b) in respect of which no objections had been raised, in accordance with Article 48(5) as it had effect immediately before exit day;

22C. ‘market surveillance authority’ has the meaning prescribed by the Construction Products Regulations 2013;”.

(13) In paragraph 25, for “Regulation (EC) No 765/2008” substitute “RAMS”.

(14) After paragraph 25, insert—

“**25A.** ‘UK national accreditation body’ means the body appointed by the Secretary of State in accordance with Article 4 of RAMS;”.

Amendments to Article 3

4.—(1) Article 3 (basic requirements for construction works and essential characteristics of construction products) is amended as follows.

(2) In paragraph 1, for “and harmonised technical specifications” substitute “, standards under Article 18A, and UK Assessment Documents”.

(3) In paragraph 3—

- (a) in the first subparagraph—

(4) OJ L 218, 13.8.2008, p. 30–47.

- (i) for “harmonised”, in both places it occurs, substitute “designated”;
- (ii) for “Commission shall, where appropriate and” substitute “Secretary of State may,”;
- (iii) for “means of delegated acts” substitute “regulations”;
- (b) in the second subparagraph—
 - (i) for “Where appropriate, the Commission shall” substitute “The Secretary of State may”;
 - (ii) for “means of delegated acts” substitute “regulations”.

PART 3

Amendments to Chapter 2

Amendment to the heading of Chapter 2

5. In the heading of Chapter 2, for “CE” substitute “UK”.

Amendments to Article 4

- 6.—(1) Article 4 (declaration of performance) is amended as follows.
- (2) In paragraph 1—
 - (a) for “harmonised” substitute “designated”;
 - (b) for “European” substitute “UK”.
 - (3) In paragraph 2—
 - (a) for “harmonised”, in the first place it occurs, substitute “designated”;
 - (b) for “European” substitute “UK”.
 - (4) In paragraph 3—
 - (a) omit “Member States shall presume”;
 - (b) after “manufacturer”, in the second place it occurs, insert “shall be presumed”.

Amendments to Article 5

- 7.—(1) Article 5 (derogations from drawing up a declaration of performance) is amended as follows.
- (2) In the words before point (a)—
 - (a) for “Union or national provisions” substitute “any enactment or rule of law in the United Kingdom”;
 - (b) for “harmonised” substitute “designated”.
 - (3) In points (a), (b) and (c), for “national rules”, in each place it occurs, substitute “enactment or rule of law in the United Kingdom”.

Amendments to Article 6

- 8.—(1) Article 6 (content of the declaration of performance) is amended as follows.
- (2) In paragraph 2(c)—
 - (a) for “harmonised” substitute “designated”;

- (b) for “European” substitute “UK”.
- (3) In paragraph 3(g)—
 - (a) for “European”, in the first place it occurs, substitute “UK”;
 - (b) for “European Technical Assessment”, in the second place it occurs, substitute “UK Assessment Document”.
- (4) In paragraph 5, after “Regulation (EC) No 1907/2006” insert “as amended from time to time”.

Amendments to Article 7

- 9.—(1) Article 7 (supply of the declaration of performance) is amended as follows.
- (2) In paragraph 3—
 - (a) for “Commission” substitute “Secretary of State”;
 - (b) for “means of delegated acts” substitute “regulations”;
- (3) In paragraph 4, for the words from “the language” to the end substitute “English”.

Substitution of Article 8

- 10. For Article 8 (general principles and use of CE marking), substitute—

“Article 8

Use of UK marking

1. The UK marking must be affixed to those construction products for which the manufacturer has drawn up a declaration of performance in accordance with Articles 4 and 6.

The UK marking must be affixed only by the manufacturer or the manufacturer’s authorised representative.

2. If a declaration of performance has not been drawn up by the manufacturer in accordance with Articles 4 and 6, the UK marking must not be affixed.

3. By affixing or having affixed the UK marking, manufacturers indicate that they take responsibility for the conformity of the construction product with the declared performance as well as the compliance with all applicable requirements laid down in this Regulation and in other enactments providing for its affixing.

4. The rules for affixing the UK marking provided for in other enactments (including in Article 30 of RAMS) apply without prejudice to this Article.

5. A public authority within the meaning of section 6 of the Human Rights Act 1998⁽⁵⁾ may not impose rules or conditions impeding the use of a construction product bearing the UK marking, or the CE marking where Article 16A(2)(a) applies, when the declared performances correspond to the requirements for such use in the United Kingdom.”.

Amendments to Article 9

- 11. In Article 9 (rules and conditions for the affixing of CE marking)—
 - (a) for “CE”, in each place it occurs (including the heading), substitute “UK”;
 - (b) in paragraph 2, for “notified” substitute “approved”.

(5) 1998 c. 42.

Omission of Article 10

12. Omit Article 10 (product contact points for construction).

PART 4

Amendments to Chapter 3

Amendments to Article 11

- 13.—(1) Article 11 (obligations of manufacturers) is amended as follows.
- (2) In paragraph 1, for “CE” substitute “UK”.
- (3) In paragraph 2, in the second subparagraph—
- (a) for “Commission” substitute “Secretary of State”;
 - (b) for “means of delegated acts” substitute “regulations”.
- (4) In paragraph 6, for the words from “a language” to the end substitute “English”.
- (5) In paragraph 7, for the words from “the competent” to “available” substitute “a competent authority”.
- (6) In paragraph 8—
- (a) omit “national”;
 - (b) for the words from “a language” to the end of the sentence substitute “English.”.

Amendments to Article 12

- 14.—(1) Article 12 (authorised representatives) is amended as follows.
- (2) In paragraph 1, at the end insert “established in the United Kingdom”.
- (3) In paragraph 2—
- (a) in point (a), for “national” substitute “market”;
 - (b) in point (b), omit “national”;
 - (c) in point (c), for “the competent national authorities, at their” substitute “a competent authority, at its”.

Amendments to Article 13

- 15.—(1) Article 13 (obligations of importers) is amended as follows.
- (2) In paragraph 1, omit “Union”.
- (3) In paragraph 2, for “CE” substitute “UK”.
- (4) In paragraph 4, for the words from “a language” to the end substitute “English”.
- (5) In paragraph 7, for the words from “the competent” to “available” substitute “a competent authority”.
- (6) In paragraph 9—
- (a) omit “national”;
 - (b) for the words from “a language” to the end of the sentence substitute “English.”.

Amendments to Article 14

16.—(1) Article 14 (obligations of distributors) is amended as follows.

(2) In paragraph 2—

(a) for “CE” substitute “UK”;

(b) for the words from “a language” to the end of the sentence substitute “English.”.

(3) In paragraph 4, for the words from “the competent” to “available” substitute “a competent authority”.

(4) In paragraph 5—

(a) omit “national”;

(b) for the words from “a language” to the end of the sentence substitute “English.”.

Insertion of new Articles 16A to 16C

17. After Article 16 (identification of economic operators), insert—

“Article 16A

*Obligations on a manufacturer which are met by complying
with obligations in the EU Construction Products Regulation*

1. Paragraph 2 applies where:

(a) a construction product is covered by a standard which:

(i) is designated under Article 18B(1)(b); or

(ii) becomes a designated standard under Article 18B(2); and

(b) before the product is placed on the market, the manufacturer:

(i) carries out the assessment and the verification of constancy of performance required by the EU Construction Products Regulation;

(ii) complies with Chapter 6 of the EU Construction Products Regulation in relation to the use, if any, of simplified procedures;

(iii) draws up a declaration of performance for the product in accordance with Articles 4 and 6 of the EU Construction Products Regulation;

(iv) provides the information referred to in Article 6(4) of the EU Construction Products Regulation with the declaration of performance;

(v) draws up the technical documentation referred to in Article 11(1) of the EU Construction Products Regulation; and

(vi) affixes or has affixed a CE marking in accordance with Articles 8 and 9 of the EU Construction Products Regulation.

2. Where this paragraph applies:

(a) the requirements on the manufacturer in the following provisions are to be treated as satisfied:

(i) Article 4(1);

(ii) Article 6;

(iii) Article 8(1);

(iv) Article 9;

(v) Article 11(1);

- (vi) Article 28(1);
 - (b) Article 8(3) has effect as if there were substituted:
 - “3. By affixing or having affixed the CE marking, manufacturers indicate that they take responsibility for the conformity of the construction product with the declared performance as well as the compliance with all applicable requirements laid down in this Regulation and in other enactments allowing for the affixing of the CE marking in satisfaction of a requirement to affix the UK marking.”;
 - (c) the following provisions have effect subject to the modifications in paragraph 3:
 - (i) Article 4(2) and (3);
 - (ii) Article 7;
 - (iii) Article 11(2) to (8);
 - (iv) Article 12;
 - (v) Article 15;
 - (d) Chapter 6 and Article 59 do not apply.
3. The modifications are that:
- (a) any reference to technical documentation is to be read as a reference to the technical documentation referred to in the second subparagraph of Article 11(1) of the EU Construction Products Regulation;
 - (b) any reference to a declaration of performance is to be read as a reference to the declaration of performance drawn up by the manufacturer in accordance with Articles 4 and 6 of the EU Construction Products Regulation;
 - (c) any reference to the UK marking is to be read as a reference to the CE marking.

Article 16B

Obligations on an importer which are met by complying with obligations in the EU Construction Products Regulation

1. Paragraph 2 applies where:
- (a) a construction product is covered by a standard which:
 - (i) is designated under Article 18B(1)(b); or
 - (ii) becomes a designated standard under Article 18B(2); and
 - (b) before placing the product on the market, an importer:
 - (i) finds that the product does not bear the UK marking;
 - (ii) ensures that the manufacturer has:
 - (aa) carried out the assessment and the verification of constancy of performance required by the EU Construction Products Regulation;
 - (bb) drawn up the technical documentation referred to in the second subparagraph of Article 11(1) of the EU Construction Products Regulation;
 - (cc) drawn up the declaration of performance in accordance with Articles 4 and 6 of the EU Construction Products Regulation; and
 - (dd) complied with Article 11(4) and (5) of this Regulation; and

- (iii) ensures that the product bears the CE marking and is accompanied by the ‘required documents’ referred to in Article 13(2) of the EU Construction Products Regulation.
2. Where this paragraph applies:
- (a) the requirements on the importer in the first subparagraph of Article 13(2) are to be treated as satisfied;
 - (b) the following provisions of Article 13 have effect subject to the modifications in paragraph 3:
 - (i) the second subparagraph of paragraph 2;
 - (ii) paragraph 5;
 - (iii) paragraphs 7 to 9.
3. The modifications are that:
- (a) any reference to a declaration of performance is to be read as a reference to the declaration of performance drawn up by the manufacturer in accordance with Articles 4 and 6 of the EU Construction Products Regulation;
 - (b) any reference to technical documentation is to be read as a reference to the technical documentation referred to in the second subparagraph of Article 11(1) of the EU Construction Products Regulation.

Article 16C

Obligations on a distributor which are met by complying with obligations in the EU Construction Products Regulation

1. Paragraph 2 applies where:
- (a) a construction product is covered by a standard which:
 - (i) is designated under Article 18B(1)(b); or
 - (ii) becomes a designated standard under Article 18B(2); and
 - (b) before making the product available on the market, a distributor:
 - (i) finds that the product does not bear the UK marking; and
 - (ii) ensures that:
 - (aa) the product bears the CE marking;
 - (bb) the product is accompanied by the ‘documents required’ referred to in Article 14(2) of the EU Construction Products Regulation and by instructions and safety information in English;
 - (cc) the manufacturer has complied with Article 11(4) and (5) of this Regulation; and
 - (dd) the importer has complied with Article 13(3) of this Regulation.
2. Where this paragraph applies:
- (a) the requirements on the distributor in the first subparagraph of Article 14(2) are to be treated as satisfied;
 - (b) Article 14 has effect as if any reference to a declaration of performance were a reference to the declaration of performance drawn up by the manufacturer in accordance with Articles 4 and 6 of the EU Construction Products Regulation.”.

PART 5

Amendments to Chapter 4

Omission of Articles 17 and 18

18. Omit articles 17 (harmonised standards) and 18 (formal objection against harmonised standards).

Insertion of new Articles 18A to 18C

19. After Article 18 (omitted by paragraph 18), insert—

“Article 18A

Standardisation mandate

- 1.** A recognised standardisation body may submit a proposal to develop a standard for the purposes of this Regulation to the Secretary of State.
- 2.** The Secretary of State may issue a standardisation mandate to a recognised standardisation body which is, or is not, based on a proposal submitted under paragraph 1.
- 3.** Where the standardisation mandate is based on a proposal submitted under paragraph 1, the mandate must be issued to the body who submitted the proposal.
- 4.** When developing a standard in response to a standardisation mandate, a recognised standardisation body must consult with such persons as it considers appropriate on the content of the standard.
- 5.** A standard must:
 - (a) provide the methods and the criteria for assessing the performance of the construction products in relation to their essential characteristics;
 - (b) when provided for in the relevant standardisation mandate, refer to an intended use of products to be covered by it;
 - (c) where appropriate and without endangering the accuracy, reliability or stability of the results, provide methods less onerous than testing for assessing the performance of the construction products in relation to their essential characteristics;
 - (d) determine the applicable factory production control, which must take into account the specific conditions of the manufacturing process of the construction product concerned;
 - (e) include technical details necessary for the implementation of the system of assessment and verification of constancy of performance.

Article 18B

Designated standards

- 1.** The Secretary of State may designate as a designated standard:
 - (a) a standard which is prepared by a recognised standardisation body and satisfies the requirements of Article 18A(5);

- (b) a harmonised standard which is adopted by a European standardisation body before, or on or after exit day, which does not become designated under paragraph 2.

2. Where, immediately before exit day -

- (a) a reference to a harmonised standard has been published in the Official Journal of the European Union under this Regulation; and
- (b) a British standard transposing the harmonised standard has been adopted,

the British standard becomes a designated standard on exit day; and the Secretary of State must, as soon as reasonably practicable after exit day, publish a reference to that standard.

The coexistence period for the standard is the period established by the European Commission under Article 17(5) as it had effect immediately before exit day.

3. Before designating a standard under paragraph 1, the Secretary of State must have regard to whether the standard is consistent with any international standards which the Secretary of State considers to be relevant.

4. The Secretary of State is to designate a standard under paragraph 1 by publishing the reference to the standard and maintaining that publication in such manner as the Secretary of State considers appropriate.

Where the standard is a harmonised standard, the published reference may be the reference to a British standard transposing the harmonised standard.

5. Alongside a reference to a standard designated under paragraph 1, the Secretary of State must publish:

- (a) the references of any superseded harmonised technical specifications;
- (b) the date of the beginning of the coexistence period;
- (c) the date of the end of the coexistence period.

6. The Secretary of State may change the date of the beginning or end of the coexistence period for a designated standard to a later date by publishing the revised date in such manner as the Secretary of State considers appropriate.

7. When considering whether the manner of publication of a reference or a revised date is appropriate, the Secretary of State must have regard to whether the publication will draw the standard or the revised date to the attention of any persons who may have an interest in it.

8. Without prejudice to Articles 36 to 38, from the date of the end of the coexistence period, the designated standard is to be the only means used for drawing up a declaration of performance for a construction product covered by it.

At the end of the coexistence period, any other national standards are to be treated as invalid to the extent that they are inconsistent with the designated standard.

9. Where a designated standard is a harmonised standard:

- (a) the provisions of the harmonised standard which address the EU Construction Products Regulation are to be treated as the provisions of the designated standard which address this Regulation;
- (b) any reference in the harmonised standard to a system of assessment and verification of constancy of performance under the EU Construction Products Regulation is to be treated as a reference to the equivalent system under this Regulation.

Article 18C

Objection to a designated standard

1. Where the Secretary of State considers that a designated standard is no longer appropriate, the Secretary of State may, after consulting with such persons as the Secretary of State considers appropriate, decide to maintain, maintain with restriction or withdraw the reference to the designated standard.

2. Where the standard was prepared by a recognised standardisation body in response to a standardisation mandate, the Secretary of State must inform the recognised standardisation body of the decision under paragraph 1 and may request the revision of the standard.”.

Amendments to Article 19

20.—(1) Article 19 (European Assessment Document) is amended as follows.

(2) In the heading, for “European” substitute “UK”.

(3) In paragraph 1—

- (a) for “European”, in both places, substitute “UK”;
- (b) for “organisation of TABs” substitute “responsible TAB”;
- (c) for “harmonised”, in each place it occurs, substitute “designated”.

(4) In paragraph 2, for “European” substitute “UK”.

(5) In paragraph 3—

- (a) for “Commission” substitute “Secretary of State”;
- (b) for “adopt delegated acts” substitute “make regulations”;
- (c) for “European” substitute “UK”.

(6) For paragraph 4, substitute—

“4. The Secretary of State may use a UK Assessment Document as a basis for a standardisation mandate with a view to developing a standard for a product referred to in paragraph 1 of this Article.”.

Amendments to Article 20

21.—(1) Article 20 (principles for the development and adoption of European Assessment Documents) is amended as follows.

(2) In the heading, for “European” substitute “UK”.

(3) In paragraph 1—

- (a) in the words before point (a), for “European” substitute “UK”;
- (b) in point (d), for “Commission” substitute “Secretary of State”.

(4) In paragraph 2—

- (a) omit “, together with the organisation of TABs,”;
- (b) for “European” substitute “UK”.

Amendments to Article 21

22.—(1) Article 21 (obligations of the TAB receiving a request for a European Technical Assessment) is amended as follows.

(2) In the heading, for “European” substitute “UK”.

- (3) In paragraph 1—
 - (a) in the words before point (a), for “TAB receiving a request for a European Technical Assessment” substitute “responsible TAB”;
 - (b) in point (a), for “harmonised” substitute “designated”;
 - (c) in points (a) and (b), for “European”, in each place it occurs, substitute “UK”.
- (4) After paragraph 1, insert—

“1A. A TAB may use a pre-exit European Assessment Document as a UK Assessment Document provided it has obtained any necessary consent to do so from the organisation of TABs established under the EU Construction Products Regulation.”.
- (5) In paragraph 2—
 - (a) after “the”, in the second place it occurs, insert “responsible”;
 - (b) omit “the organisation of TABs and”;
 - (c) for “Commission”, in each place it occurs, substitute “Secretary of State”.
- (6) In paragraph 3, for “Commission” substitute “Secretary of State”.

Substitution of Article 22

- 23.** For Article 22 (publication), substitute—

“Article 22

Publication

1. When a responsible TAB adopts a UK Assessment Document, it must send a copy of the document to the Secretary of State.

2. Subject to Article 25(1), the Secretary of State must publish a list of references of the final UK Assessment Documents in such manner as the Secretary of State considers appropriate to bring the documents to the attention of persons who may have interest in them.

The Secretary of State must publish any changes to the list.”.

Amendments to Article 23

- 24.** In Article 23 (dispute resolution in cases of disagreement between TABs)—
- (a) for “European” substitute “UK”;
 - (b) for “organisation of TABs” substitute “responsible TAB”;
 - (c) for “Commission” substitute “Secretary of State”.

Amendments to Article 24

- 25.—(1)** Article 24 (content of the European Assessment Document) is amended as follows.
- (2) In the heading, for “European” substitute “UK”.
 - (3) In paragraph 1—
 - (a) for “European” substitute “UK”;
 - (b) for “organisation of TABs” substitute “responsible TAB”.
 - (4) In paragraph 2, for “European” substitute “UK”.

(5) In paragraph 3—

- (a) omit the words from “or the Guidelines” to “European technical approvals”;
- (b) for “European”, in the second place it occurs, substitute “UK”.

(6) After paragraph 3, insert—

“4. Where the performance of some of the essential characteristics of the product can appropriately be assessed with methods and criteria already established in pre-exit European Assessment Documents, or used in accordance with Article 9 of Council [Directive 89/106/EEC](#) of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products⁽⁶⁾ before 1 July 2013 in the context of issuing European technical approvals, those existing methods and criteria may, subject to any necessary consent from the organisation of TABs established under the EU Construction Products Regulation, be incorporated as parts of the UK Assessment Document.”.

Amendments to Article 25

26. For Article 25 (formal objections against European Assessment Documents), substitute—

“Article 25

Formal objections against UK Assessment Documents

1. Where the Secretary of State considers that a UK Assessment Document does not satisfy the demands to be met in relation to the basic requirements for construction works set out in Annex 1, the Secretary of State must decide, after consulting the responsible TAB, any other relevant TABs, and such other persons as the Secretary of State considers appropriate, to publish, not to publish, to publish with restriction, to maintain, to maintain with restriction or to withdraw the reference to the UK Assessment Document.

2. The Secretary of State must inform the responsible TAB and any other relevant TABs of the decision under paragraph 1 and may request the revision of the UK Assessment Document concerned.”.

Amendments to Article 26

27.—(1) Article 26 (European Technical Assessment) is amended as follows.

(2) In paragraph 1—

- (a) for “European”, in each place it occurs (including the heading), substitute “UK”;
- (b) after “where a” insert “standardisation”;
- (c) for “harmonised” substitute “designated”;
- (d) omit “by the Commission”;
- (e) for “Article 17(5)” substitute “Article 18B”.

(3) In paragraph 2—

- (a) for “European”, in the first place it occurs, substitute “UK”;
- (b) for “TAB receiving the request for the European Technical Assessment” substitute “responsible TAB”.

(4) For paragraph 3, substitute—

⁽⁶⁾ OJ L 40, 11.2.1989, p. 12–26.

“3. The Secretary of State must make regulations to establish the format of the UK Technical Assessment.”.

Substitution of Article 27

28. For Article 27 (levels or classes of performance), substitute—

“Article 27

Levels or classes of performance

1. The Secretary of State may make regulations, in accordance with Article 60, to establish classes of performance in relation to the essential characteristics of construction products.

2. Where the Secretary of State has established classes of performance in relation to the essential characteristics of construction products, a recognised standardisation body must use those classes in a standard prepared under Article 18A. A responsible TAB must where relevant use those classes in UK Assessment Documents.

Where classes of performance in relation to the essential characteristics of construction products are not established by the Secretary of State, they may be established by a recognised standardisation body in a standard prepared under Article 18A, on the basis of a revised standardisation mandate.

3. When provided for in the relevant standardisation mandate, a recognised standardisation body must establish in a standard prepared under Article 18A threshold levels in relation to essential characteristics and, when appropriate, for intended uses, to be fulfilled by construction products in the United Kingdom.

4. Where a recognised standardisation body has established classes of performance in a designated standard or a European standardisation body has established such classes in a harmonised standard which is a designated standard, a responsible TAB must use those classes in the UK Assessment Documents where they are relevant for the construction product.

When deemed appropriate, a responsible TAB may, with the agreement of the Secretary of State and after consulting such persons as it considers appropriate, establish in the UK Assessment Document classes of performance and threshold levels in relation to the essential characteristics of a construction product within its intended use as foreseen by the manufacturer.

5. The Secretary of State may make regulations, in accordance with Article 60, to establish conditions under which a construction product is to be deemed to satisfy a certain level or class of performance without testing or without further testing.

Where such conditions are not established by the Secretary of State, they may be established by a recognised standardisation body in a standard prepared under Article 18A, on the basis of a revised standardisation mandate.

6. When the Secretary of State has established classification systems in accordance with paragraph 1, any person may determine the levels or classes of performance to be respected by construction products in relation to their essential characteristics only in accordance with those classification systems.

7. A recognised standardisation body and a responsible TAB must respect the regulatory needs of the United Kingdom when determining threshold levels or classes of performance.”.

Amendments to Article 28

29.—(1) Article 28 (assessment and verification of constancy of performance) is amended as follows.

(2) In paragraph 2—

(a) in the first subparagraph—

- (i) for “delegated acts” substitute “regulations”;
- (ii) for “Commission shall” substitute “Secretary of State may”;
- (iii) omit the final sentence.

(b) in the second subparagraph, for “Commission” substitute “Secretary of State”.

(3) In paragraph 3, for the words from “mandates for harmonised” to the end of the sentence substitute “standardisation mandates, standards prepared under Article 18A, and UK Assessment Documents.”.

PART 6

Amendments to Chapter 5

Amendments to Article 29

30. For Article 29 (designation, monitoring and evaluation of TABs), substitute—

“Article 29

Designation, monitoring and evaluation of TABs

- 1.** A ‘TAB’ is a technical assessment body which:
 - (a) is designated as such by the Secretary of State under paragraph 3; or
 - (b) immediately before exit day was designated as such a body by the Secretary of State under this Article for one or several product areas.
- 2.** Paragraph 1 is subject to Article 30(3) (withdrawal of designation).
- 3.** The Secretary of State may designate a body established in the United Kingdom as a technical assessment body for one or several of the product areas listed in Table 1 of Annex 4.
- 4.** The Secretary of State must make publicly available by electronic means the list of TABs indicating the product areas for which they are designated.
- 5.** The Secretary of State must make any updates to that list publicly available.
- 6.** The Secretary of State must monitor the activities and competence of the TABs and evaluate them in relation to the respective requirements set out in Table 2 of Annex 4.”.

Amendments to Article 30

31.—(1) Article 30 (requirements for TABs) is amended as follows.

(2) In paragraph 1, for “European” substitute “UK”.

(3) For paragraph 2, substitute—

“**2.** A TAB must:

- (a) work together with other TABs to develop UK Assessment Documents in accordance with Annex 2;
 - (b) share any observations concerning another TAB not fulfilling its tasks in accordance with Article 21 and Annex 2 with the Secretary of State;
 - (c) share examples of best practice with other TABs to promote greater efficiency and provide a better service to industry;
 - (d) make publicly available its organogram and the names of the members of its internal decision-making bodies.”.
- (4) In paragraph 3—
- (a) for “Member State” substitute “Secretary of State”;
 - (b) omit “and inform the Commission and the other Member States thereof”.

Substitution of Article 31

- 32.** For Article 31 (coordination of TABs), substitute—

“Article 31

Coordination of TABs

1. The TABs must make such arrangements as they consider appropriate to ensure the coordination of TABs and, if necessary, cooperation and consultation with other stakeholders.
2. If the TABs decide to establish a separate body having legal personality and established in the United Kingdom to facilitate the coordination of TABs, a responsible TAB may delegate its functions under the specified provisions in relation to developing and adopting UK Assessment Documents to that body.
3. The “specified provisions” are—
 - (a) Article 19(1);
 - (b) Article 22(1);
 - (c) Article 23;
 - (d) Article 24;
 - (e) Article 27;
 - (f) sections 2, 4, 5, 7, 8 (excluding the duty to communicate the draft UK Assessment Document to the manufacturer) and 9 of Annex 2.”.

Amendments to Article 32

- 33.** For Article 32 (Union financing), substitute—

“Article 32

Financing

1. The Secretary of State may provide financial assistance to a TAB for the implementation of the tasks referred to in Articles 30(2) and 31.
2. Financial assistance may be provided in such form and on such terms as the Secretary of State considers appropriate.”.

Omission of Articles 33 to 35

34. Omit Articles 33 (financing arrangements) to 35 (protection of the Union’s financial interests).

PART 7

Amendments to Chapter 6

Amendments to Article 36

- 35.**—(1) Article 36 (use of appropriate technical documentation) is amended as follows.
- (2) In paragraph 1—
- (a) in point (a), for “a Commission decision” substitute “established by the Secretary of State under Article 27(5)”;
 - (b) in point (b), for “harmonised”, in both places, substitute “designated”.
- (3) In paragraph 2, for “a notified” substitute “an approved”.

Amendments to Article 37

36. In Article 37 (use of simplified procedures by micro-enterprises), for “harmonised”, in each place it occurs, substitute “designated”.

Amendments to Article 38

- 37.**—(1) Article 38 (other simplified procedures) is amended as follows.
- (2) In paragraph 1, for “harmonised”, in both places, substitute “designated”;
- (3) In paragraph 2, for “a notified” substitute “an approved”.

PART 8

Amendments to Chapter 7

Amendment to the heading of Chapter 7

38. For the heading of Chapter 7, substitute “Approved Bodies”.

Omission of Article 39

39. Omit Article 39 (notification).

Insertion of new Article 39A

40. After Article 39 (omitted by paragraph 39), insert—

“Article 39A

Approved bodies

- 1.** An “approved body” is a body which:

- (a) is approved by the Secretary of State under Article 48 as a body authorised to carry out third party tasks in the process of assessment and verification of constancy of performance under this Regulation; or
 - (b) immediately before exit day was a notified body in respect of which the Secretary of State had taken no action under Article 50(1) (as it had effect immediately before exit day) to suspend or withdraw the body's status as a notified body.
2. Paragraph 1 has effect subject to Article 50(1) (restriction, suspension or withdrawal of approval).
3. Where an approved body was a notified body before exit day:
- (a) it is to be treated on or after exit day as approved in respect of the same activities in relation to a harmonised standard in respect of which it was notified immediately before exit day where that standard becomes designated under Article 18B(2);
 - (b) any horizontal notification which was in force immediately before exit day in relation to a case set out in point 3 of Annex 5 to the EU Construction Products Regulation is to be treated on or after exit day as a horizontal approval under this Regulation.”.

Amendments to Article 40

- 41.—(1) Article 40 (notifying authorities) is amended as follows.
- (2) For the heading, substitute “Assessment, approval and monitoring of approved bodies”.
- (3) In paragraph 1—
- (a) for “Member States shall designate a notifying authority that” substitute “The Secretary of State”;
 - (b) for “notification” substitute “approval”;
 - (c) for “notified” substitute “approved”.
- (4) In paragraph 2—
- (a) for “Member States” substitute “The Secretary of State”
 - (b) for “their national accreditation bodies within the meaning of, and in accordance with, Regulation (EC) No 765/2008” substitute “the UK national accreditation body”.
 - (c) For paragraph 3, substitute—
- “3. Where the Secretary of State delegates or otherwise entrusts the assessment, approval or monitoring referred to in paragraph 1 to a body which is not a governmental entity, that body must be a legal entity and must comply with the following requirements:
- (a) it must be established in such a way that no conflicts of interest with approved bodies occur;
 - (b) it must be organised and operated so as to safeguard the objectivity and impartiality of its activities;
 - (c) it must be organised in such a way that each decision relating to approval of a body to be authorised to carry out third party tasks in the process of assessment and verification of constancy of performance is taken by competent persons different from those who carried out the assessment;
 - (d) it must not offer or provide activities performed by approved bodies, or consultancy services on a commercial or competitive basis;
 - (e) it must safeguard the confidentiality of the information obtained;

- (f) it must have a sufficient number of competent personnel at its disposal for the proper performance of its tasks;
- (g) it must have arrangements to cover liabilities arising from its activities.”.
- (5) In paragraph 4, for “notifying authority” substitute “Secretary of State”.

Omission of Articles 41 and 42

42. Omit Articles 41 (requirements relating to notifying authorities) and 42 (information obligation for Member States).

Amendments to Article 43

- 43.**—(1) Article 43 (requirements for notified bodies) is amended as follows.
- (2) In the heading, for “notified” substitute “approved”.
 - (3) In paragraph 1, for “For the purposes of notification, a notified” substitute “An approved”.
 - (4) In paragraph 2—
 - (a) for “A notified” substitute “An approved”;
 - (b) for “under national law” substitute “in the United Kingdom”;
 - (5) In paragraphs 3 to 6—
 - (a) for “a notified”, in each place it occurs, substitute “an approved”;
 - (b) for “notified”, in each place it occurs (except in the words substituted by paragraph (a)), substitute “approved”.
 - (6) In paragraph 7—
 - (a) for “notified”, in both places, substitute “approved”;
 - (b) in point (c), for “harmonised” substitute “designated”.
 - (7) In paragraph 8, for “notified”, in both places, substitute “approved”.
 - (8) For paragraph 9, substitute—

“9. An approved body must have adequate liability insurance in respect of its activities.”.
 - (9) In paragraph 10—
 - (a) for “notified” substitute “approved”;
 - (b) for the words from “the competent” to the end of the sentence substitute “a competent authority, the UK national accreditation body or any other body to which the Secretary of State delegates or otherwise entrusts the monitoring of the approved body.”.
 - (10) In paragraph 11—
 - (a) for “A notified” substitute “An approved”;
 - (b) for “notified”, in the second place it occurs, substitute “approved”.

Amendments to Article 44

- 44.** In Article 44 (presumption of conformity)—
- (a) for “A notified” substitute “An approved”;
 - (b) for “harmonised”, in both places, substitute “designated”;
 - (c) omit the words from “, the references” to “*Union*,”.

Amendments to Article 45

- 45.**—(1) Article 45 (subsidiaries and subcontractors of notified bodies) is amended as follows.
- (2) In the heading, for “notified” substitute “approved”.
 - (3) In paragraph 1—
 - (a) for “a notified” substitute “an approved”;
 - (b) for “notifying authority” substitute “Secretary of State”.
 - (4) In paragraph 2, for “notified” substitute “approved”.
 - (5) In paragraph 4—
 - (a) for “notified” substitute “approved”;
 - (b) for “notifying authority” substitute “Secretary of State”.

Amendments to Article 46

- 46.** In Article 46 (use of facilities outside the testing laboratory of the notified body), for “notified”, in each place it occurs (including the heading) substitute “approved”.

Amendments to Article 47

- 47.**—(1) Article 47 (applications for notification) is amended as follows.
- (2) In the heading, for “notification” substitute “approval”.
 - (3) In paragraph 1—
 - (a) for “notification” substitute “approval”;
 - (b) for the words from “notifying” to the end of the sentence substitute “Secretary of State.”.
 - (4) In paragraph 2—
 - (a) after “issued by the” insert “UK”;
 - (b) omit “within the meaning of Regulation [\(EC\) No 765/2008](#)”.
 - (5) In paragraph 3, for “notifying authority” substitute “Secretary of State”.

Amendments to Article 48

- 48.**—(1) Article 48 (notification procedure) is amended as follows.
- (2) In the heading, for “Notification” substitute “Approval”.
 - (3) In paragraph 1—
 - (a) for “Notifying authorities” substitute “The Secretary of State”;
 - (b) for “notify” substitute “approve”.
 - (4) Omit paragraph 2.
 - (5) In paragraph 3, for “notification” substitute “approval”.
 - (6) Omit paragraphs 4 to 6.

Amendments to Article 49

- 49.**—(1) Article 49 (identification numbers and lists of notified bodies) is amended as follows.
- (2) In the heading, for “notified” substitute “approved”.
 - (3) In paragraph 1—

- (a) for “Commission” substitute “Secretary of State”;
 - (b) for “notified”, in both places, substitute “approved”;
 - (c) for “Union acts” substitute “relevant enactments”.
- (4) In paragraph 2—
- (a) in the first subparagraph—
 - (i) for “Commission”, in the first place it occurs, substitute “Secretary of State”;
 - (ii) for “bodies notified under this Regulation” substitute “approved bodies”;
 - (iii) for the words from “notified, notably” to the end of the sentence substitute “approved.”;
 - (b) in the second subparagraph, for “Commission” substitute “Secretary of State”.
- (5) After paragraph 2, insert—
- “3. The Secretary of State may authorise the UK national accreditation body to compile and maintain the list referred to in paragraph 2.”.

Substitution of Article 50

50. For Article 50 (changes to the notification), substitute—

“Article 50

Changes to the approval

1. Where the Secretary of State considers that an approved body no longer meets the requirements in Article 43, or that it is failing to fulfil its obligations, the Secretary of State must restrict, suspend or withdraw the approval as appropriate, depending on the seriousness of the failure to meet those requirements or to fulfil those obligations.

2. In the event of withdrawal, restriction or suspension of approval or where the approved body has ceased its activity, the Secretary of State must take the appropriate steps to ensure that the files of that body are either processed by another approved body or kept available for the Secretary of State and other market surveillance authorities at their request.”.

Omission of Article 51

51. Omit Article 51 (challenge of the competence of notified bodies).

Amendments to Article 52

- 52.—(1) Article 52 (operational obligations for notified bodies) is amended as follows.
- (2) In the heading and paragraphs 1 and 2, for “notified”, in each place it occurs, substitute “approved”.
 - (3) In paragraphs 3 and 4, for “a notified” substitute “an approved”.
 - (4) In paragraph 5, for “notified” substitute “approved”.

Amendments to Article 53

- 53.—(1) Article 53 (information obligations for notified bodies) is amended as follows.
- (2) In the heading, for “notified” substitute “approved”.

- (3) In paragraph 1—
 - (a) in the words before point (a)—
 - (i) for “Notified” substitute “Approved”;
 - (ii) for “notifying authority” substitute “Secretary of State”;
 - (b) in points (b) and (d), for “notification” substitute “approval”.
- (4) In paragraph 2, for “notified”, in both places, substitute “approved”.

Omission of Article 54

- 54.** Omit Article 54 (exchange of experience).

Substitution of Article 55

- 55.** For Article 55 (coordination of notified bodies) substitute—

“Article 55

Coordination of approved bodies

- 1.** The Secretary of State must establish a group of approved bodies to ensure appropriate coordination and cooperation between approved bodies.
- 2.** Approved bodies must participate in the work of that group, directly or by means of designated representatives, or ensure that their representatives are informed of the work of the group.”.

PART 9

Amendments to Chapter 8

Amendment to the heading of Chapter 8

- 56.** In the heading of Chapter 8, omit “and safeguard procedures”.

Amendments to Article 56

57.—(1) Article 56 (procedure to deal at national level with construction products presenting a risk) is amended as follows.

- (2) In the heading, omit “at national level”.
- (3) In paragraph 1—
 - (a) in the first subparagraph—
 - (i) omit “of one Member State”;
 - (ii) for “Regulation (EC) No 765/2008” substitute “RAMS”;
 - (iii) for “harmonised” substitute “designated”;
 - (iv) for “European” substitute “UK”;
 - (b) in the third subparagraph—
 - (i) for “notified”, in the first place it occurs, substitute “approved”;
 - (ii) for “a notified” substitute “an approved”;

- (c) in the fourth subparagraph, for “Regulation (EC) No 765/2008” substitute “RAMS”.
- (4) Omit paragraphs 2 and 3.
- (5) In paragraph 4—
 - (a) in the first subparagraph, omit “provisional” and “national”;
 - (b) omit the second subparagraph.
- (6) Omit paragraphs 5 to 8.

Omission of Article 57

- 58.** Omit Article 57 (Union safeguard procedure).

Amendments to Article 58

- 59.** In Article 58 (complying construction products which nevertheless present a risk to health and safety)—
 - (a) in paragraph 1, for “a Member State” substitute “a market surveillance authority”;
 - (b) omit paragraphs 2 to 5.

Amendments to Article 59

- 60.**—(1) Article 59 (formal non-compliance) is amended as follows.
- (2) In paragraph 1—
 - (a) in the words before point (a), for “Member State” substitute “market surveillance authority”;
 - (b) in points (a) and (b), for “CE” substitute “UK”.
- (3) In paragraph 2, for “Member State” substitute “market surveillance authority”.

Insertion of new Article 59A

- 61.** After Article 59, insert—

“Article 59A

Formal non-compliance in relation to the EU Construction Products Regulation

1. Without prejudice to Article 56, where a market surveillance authority considers an economic operator is seeking to rely on provisions in Article 16A, 16B or 16C in order to comply with the requirements of this Regulation and makes one of the following findings, it must require the relevant economic operator to put an end to the non-compliance concerned:

- (a) the CE marking has not been affixed in accordance with Article 8(2) of the EU Construction Products Regulation;
- (b) the CE marking has been affixed in breach of Article 8 or 9 of the EU Construction Products Regulation;
- (c) the declaration of performance has not been drawn up in accordance with Articles 4 and 6 of the EU Construction Products Regulation and Article 7 of this Regulation (as modified by Article 16A);
- (d) the technical documentation referred to in the second subparagraph of Article 11(1) of the EU Construction Products Regulation is either not available or not complete.

2. Where the non-compliance referred to in paragraph 1 continues, the market surveillance authority must take all appropriate measures to restrict or prohibit the making available on the market of the construction product or ensure that it is recalled or withdrawn from the market.

Article 59B

Other non-compliance in relation to the EU Construction Products Regulation

1. Paragraph 2 applies where an economic operator:
 - (a) relies on provisions in Article 16A, 16B or 16C in order to comply with this Regulation when making a product available on the market; and
 - (b) after the product is made available on the market:
 - (i) the manufacturer is required, or becomes aware that another person is required, under the EU Construction Products Regulation to take corrective measures in relation to products on the market of the EU, or to withdraw or recall products from that market, and, if the United Kingdom had remained a member State, this requirement would have extended to the product in question; or
 - (ii) a certificate in relation to the product is suspended or withdrawn, or restricted to the extent that it is no longer valid for that product, under Article 52(4) or (5) of the EU Construction Products Regulation.
2. Where this paragraph applies:
 - (a) the product referred to in paragraph 1(a) is no longer considered to be compliant with this Regulation;
 - (b) the manufacturer must inform a market surveillance authority and any importer or distributor of the product of the action referred to in paragraph 1(b)(i) or 1(b)(ii) which is required, or has been taken, under the EU Construction Products Regulation;
 - (c) the manufacturer and any importer or distributor of the product must take any action required under Article 11(7), Article 13(7) or Article 14(4) respectively;
 - (d) a market surveillance authority may require the manufacturer or any importer or distributor of the product to take corrective measures to bring the product into conformity with this Regulation or to withdraw or recall it from the market.”.

PART 10

Amendments to Chapter 9

Substitution of Article 60

62. For Article 60 (delegated acts), substitute—

“Article 60

Regulations

1. For the purposes of achieving the objectives of this Regulation, in particular removing and avoiding restrictions on making construction products available on the market, the Secretary of State may by regulations:

- (a) determine the essential characteristics or threshold levels within specific families of construction products, in relation to which, in accordance with Articles 3 to 6, the manufacturer must declare, in relation to their intended use, by levels or classes, or in a description, the performance of the manufacturer's product when it is placed on the market;
 - (b) determine the conditions on which a declaration of performance may be electronically processed, in order to make it available on a web site in accordance with Article 7;
 - (c) amend the period for which the manufacturer must keep the technical documentation and the declaration of performance after the construction product has been placed on the market, in accordance with Article 11, based on the expected life or the part played by the construction product in the construction works;
 - (d) amend Annex 2 and adopt supplementary procedural rules in accordance with Article 19(3) in order to ensure compliance with the principles in Article 20, or the application in practice of the procedures set out in Article 21;
 - (e) amend Annex 3, table 1 of Annex 4, and Annex 5 in response to technical progress;
 - (f) establish and adapt classes of performance in response to technical progress in accordance with Article 27(1);
 - (g) determine the conditions on which a construction product is to be deemed to satisfy a certain level or class of performance without testing or without further testing in accordance with Article 27(5), provided that the fulfilment of the basic requirements for construction works is not thereby jeopardised;
 - (h) adapt, establish and revise the system or systems of assessment and verification of constancy of performance, in accordance with Article 28, relating to a given construction product, a given product family or a given essential characteristic, and in accordance with:
 - (i) the importance of the part played by the product or those essential characteristics with respect to the basic requirements for construction works;
 - (ii) the nature of the product;
 - (iii) the effect of the variability of the essential characteristics of the construction product during the expected life of the product; and
 - (iv) the susceptibility to defects in the product's manufacture.
2. Regulations under this Article or Article 26(3) are to be made by statutory instrument.
3. Such regulations may:
- (a) contain incidental, supplemental, consequential and transitional provision and savings;
 - (b) make different provision for different purposes.
4. A statutory instrument containing regulations made under this Article or Article 26(3) is subject to annulment in pursuance of a resolution of either House of Parliament.”.

Omission of Articles 61 to 64

- 63.** Omit Articles 61 (exercise of the delegation) to 64 (Committee).

Amendments to Article 66

64. In Article 66 (transitional provisions), omit paragraphs 2 to 4.

Omission of Articles 67 and 68

65. Omit Articles 67 (reporting by the Commission) and 68 (entry into force).

PART 11

Amendments to the Annexes

Substitution of Annex 2

66. For Annex 2 (procedure for adopting a European Assessment Document), substitute—

“ANNEX 2

PROCEDURE FOR ADOPTING A UK ASSESSMENT DOCUMENT

Request for a UK Technical Assessment

1. When a manufacturer makes a request for a UK Technical Assessment to any TAB for a construction product, and after the manufacturer and the responsible TAB have signed an agreement of commercial secrecy and confidentiality, unless the manufacturer decides otherwise, the manufacturer must submit to the responsible TAB a technical file describing the product, its use as foreseen by the manufacturer and details of the factory production control the manufacturer intends to apply.

Requirements in relation to relevant TABs

2. For construction products referred to in Article 21(1)(c) for which there are other relevant TABs, the responsible TAB must within three weeks of the receipt of the technical file:

- (a) agree a work programme for the development of the UK Assessment Document with the relevant TABs;
- (b) establish a working group of the relevant TABs to develop the UK Assessment Document.

A representative from each relevant TAB must participate in the working group established by the responsible TAB.

Contract

3. For construction products referred to in Article 21(1)(c), within 1 month from the receipt of the technical file, a contract must be concluded between the manufacturer and the responsible TAB for the production of the UK Technical Assessment, defining the work programme for drawing up the UK Assessment Document, including:

- the organisation of work between any relevant TABs,
- if applicable, the composition of the working group referred to in section 2.

Work programme

4. After the conclusion of the contract with the manufacturer, the responsible TAB must inform the Secretary of State of the work programme for drawing up the UK Assessment Document and the schedule for its execution and indicate the assessment programme. This communication must take place within 3 months of receipt of the request for a UK Technical Assessment.

The draft UK Assessment Document

5. The responsible TAB must finalise a draft UK Assessment Document with the working group referred to in section 2 and must share this draft with the parties concerned within 6 months of the date the Secretary of State was informed of the work programme.

Secretary of State participation

6. The Secretary of State may participate, as an observer, in all the parts of the execution of the work programme.

Extension and delay

7. Any delay in relation to the time limits set in sections 1 to 5 in this Annex must be reported by the responsible TAB to the Secretary of State.

If an extension of the time limits for developing the UK Assessment Document can be justified, notably by the absence of a Secretary of State decision on the applicable system of assessment and verification of constancy of performance for the construction product or by the need to develop a new test method, the Secretary of State is to set an extended time limit.

Amendments and adoption of a UK Assessment Document

8. The responsible TAB must communicate the draft UK Assessment Document to the manufacturer. The manufacturer has 15 working days to provide representations to the responsible TAB. Thereafter, the responsible TAB must:

- (a) consider any representations from the manufacturer with the working group referred to in section 2 and agree any changes to the draft UK Assessment Document with that group;
- (b) if applicable, inform the manufacturer as to how the manufacturer's reactions have been taken into account;
- (c) adopt the draft UK Assessment Document; and
- (d) send a copy to the Secretary of State.

If, within 15 working days of receipt, the Secretary of State provides observations to the responsible TAB on the draft UK Assessment Document, the responsible TAB, after it and any relevant TABs have been given the opportunity to comment, must amend the draft accordingly and must send a copy of the adopted UK Assessment Document to the manufacturer and to the Secretary of State.

In this section, "working day" means any day other than:

- (a) Saturday or Sunday;
- (b) Christmas Day or Good Friday; or

- (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971(7) in any part of the United Kingdom.

Final UK Assessment Document to be published

9. As soon as the first UK Technical Assessment is issued by the responsible TAB on the basis of the adopted UK Assessment Document, the responsible TAB must adjust the UK Assessment Document, if appropriate, based on experiences gained and with the agreement of any relevant TABs.

The responsible TAB must adopt the final UK Assessment Document and must send a copy of it to the Secretary of State for publication of its reference.

As soon as the UK mark is affixed to the product, the responsible TAB must inform any relevant TABs and all the relevant TABs (including the responsible TAB) must keep the UK Assessment Document publicly available by electronic means.

Use of final UK Assessment Document

10. Once the reference to the final UK Assessment Document is published by the Secretary of State under Article 22, it may be used by any relevant TAB for the purpose of issuing UK Technical Assessments.”.

Amendments to Annex 3

67.—(1) Annex 3 (declaration of performance) is amended as follows.

(2) In point 6a—

- (a) for “Harmonised” substitute “Designated”;
- (b) for “Notified” substitute “Approved”.

(3) In point 6b—

- (a) for “European”, in both places, substitute “UK”;
- (b) for “Notified” substitute “Approved”.

(4) In point 8, after “Regulation (EU) No 305/2011” insert “as it has effect in the United Kingdom”.

(5) In the instructions for drawing up the declaration of performance—

- (a) in paragraph 1, after “Regulation (EU) 305/2011”, in the first place it occurs, insert “as it has effect in the United Kingdom”.
- (b) in paragraph 2, in point 4—
 - (i) for “harmonised” substitute “designated”;
 - (ii) for “European” substitute “UK”.
- (c) in paragraph 3, in the table—
 - (i) in the instruction for point 1, for “CE” substitute “UK”;
 - (ii) in the instruction for points 6a and 6b—
 - (aa) for “harmonised”, in each place it occurs, substitute “designated”;
 - (bb) for “European”, in each place it occurs, substitute “UK”;
 - (cc) for “notified”, in each place it occurs, substitute “approved”.

Amendments to Annex 4

68. In Annex 4 (product areas and requirements for TABs), in table 2, in the requirement set out in the third column in relation to the first three competences—

- (a) in point b, for “Member States where it is designated” substitute “United Kingdom”;
- (b) in point e, for “harmonised” substitute “designated”.

Amendments to Annex 5

69.—(1) Annex 5 (assessment and verification of constancy of performance) is amended as follows.

- (2) In points 1.1 to 1.5, for “notified”, in each place it occurs, substitute “approved”.
- (3) In point 1.6—
 - (a) for “European”, in both places (including the heading) substitute “UK”;
 - (b) for “Notified”, in both places, substitute “Approved”.
- (4) In point 2, for “notified”, in each place it occurs, substitute “approved”.
- (5) In point 3, in the heading, for “notifications” substitute “approvals”.

PART 12

Transitional and saving provisions in relation to EU Exit

Transitional provision in respect of economic operators

70.—(1) Subject to sub-paragraph (2), where a construction product was made available on the market of the United Kingdom during the pre-exit period, despite the amendments made by this Schedule, any obligation to which an economic operator was subject under the 2011 Regulation as it had effect immediately before exit day, continues to have effect as it did immediately before exit day, in relation to that product.

- (2) Sub-paragraph (1) does not apply to—
 - (a) any obligation to inform an authority established in a state which, after exit day, is an EEA state of any matter;
 - (b) any obligation to provide documentation to an authority referred to in paragraph (a); or
 - (c) any obligation to take action outside of the market of the United Kingdom in respect of that product.

Transitional provision in respect of market surveillance

71.—(1) Subject to the modifications in sub-paragraph (3), where a construction product was made available on the market of the United Kingdom during the pre-exit period, despite the amendments made by this Schedule, any obligation to which a market surveillance authority, or the United Kingdom as a member State, was subject under the specified provisions of the 2011 Regulation as they had effect immediately before exit day, continues to have effect as it did immediately before exit day, in relation to that product.

- (2) The “specified provisions” are—
 - (a) Article 56(1);
 - (b) the first subparagraph of Article 56(4);

- (c) Article 58(1);
- (d) Article 59.
- (3) The modifications are that—
 - (a) in Article 56(1)—
 - (i) the requirement on a market surveillance authority—
 - (aa) to carry out an evaluation is also to apply where the authority takes action under Article 20 of Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 as it has effect in the United Kingdom on or after exit day;
 - (bb) to inform the notified body is only to apply where it is a UK notified body;
 - (ii) the reference to Article 21 of Regulation (EC) No 765/2008 is to be read as a reference to that Regulation as it has effect in the United Kingdom on or after exit day;
 - (b) any obligation on the United Kingdom as a member State is to be read as an obligation on a market surveillance authority;
 - (c) in the first subparagraph of Article 56(4), the reference to “provisional” is to be read as if it were omitted.

72.—(1) Sub-paragraph (2) applies where a construction product was made available on the market of the United Kingdom during the pre-exit period and on or after exit day—

- (a) the manufacturer is required, or becomes aware that another economic operator is required, under the EU Construction Products Regulation to take corrective measures in relation to products on the market of the EU, or to withdraw or recall products from that market, and, if the United Kingdom had remained a member State, this requirement would have extended to the product made available on the market of the United Kingdom; or
 - (b) any certificate in relation to the product is suspended or withdrawn, or restricted to the extent that it is no longer valid for that product, under Article 52(4) or (5) of the EU Construction Products Regulation.
- (2) Where this sub-paragraph applies—
- (a) the manufacturer must inform a market surveillance authority and any economic operator who made the product available on the market of the United Kingdom during the pre-exit period of the action referred to in sub-paragraph (1)(a) or (b) which is required, or has been taken, under the EU Construction Products Regulation;
 - (b) the manufacturer and any other economic operator who made the product available on the market of the United Kingdom during the pre-exit period must take any action required under Article 11(7), Article 13(7) or Article 14(4) of the 2011 Regulation as it had effect immediately before exit day.

Transitional provision in respect of notified bodies and certificates

73.—(1) Subject to sub-paragraph (2), where a construction product was made available on the market of the United Kingdom during the pre-exit period, despite the amendments made by this Schedule, any obligation to which a UK notified body was subject under Articles 52 and 53 of the 2011 Regulation as they had effect immediately before exit day, continues to have effect as it did immediately before exit day, in relation to that product.

(2) Sub-paragraph (1) does not apply to any requirement to inform a notified body which is not a UK notified body of any matter.

74.—(1) Subject to sub-paragraph (2), where a construction product was made available on the market of the United Kingdom during the pre-exit period, any relevant certificate issued by a notified body in respect of that product which is valid immediately before exit day is to remain valid, on or after exit day, for the purposes of the market of the United Kingdom.

(2) Sub-paragraph (1) is subject to any action which may be taken to restrict, suspend or withdraw the certificate on or after exit day by—

- (a) a notified body under the EU Construction Products Regulation; or
- (b) a UK notified body under Article 52 of the 2011 Regulation as it had effect immediately before exit day.

Transitional provision in respect of products not yet placed on the market during the pre-exit period

75. Where during the pre-exit period—

- (a) a construction product has not yet been placed on the market of the United Kingdom,
- (b) a manufacturer, or a UK notified body, has carried out tasks or issued certification in relation to that product under Article 28 of, and Annex 5 to, the 2011 Regulation as they had effect immediately before exit day,

those actions have effect as if they had been done under those provisions as they have effect in the United Kingdom on or after exit day.

Saving provision in respect of pre-exit EU tertiary legislation

76. Subject to the amendments made by Schedule 3 to these Regulations—

- (a) any delegated act adopted by the Commission under Article 60 of the 2011 Regulation,
- (b) any implementing act adopted by the Commission under Article 26(3) of the 2011 Regulation, and
- (c) any decision adopted by the Commission under the Construction Products Directive;

which was in force immediately before exit day is to be treated on or after exit day as if it was made by the Secretary of State under the 2011 Regulation.

Interpretation of Part 12

77. In this Part—

“construction product” and “economic operator” have the same meaning as in the 2011 Regulation as it had effect immediately before exit day;

“the Construction Products Directive” means Council [Directive 89/106/EEC](#) of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products⁽⁸⁾;

“EU Construction Products Regulation” means Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the

⁽⁸⁾ OJ L 40, 11.2.1989, p. 12–26. [Directive 89/106/EEC](#) was repealed by Article 65 of Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products.

marketing of construction products and repealing Council [Directive 89/106/EEC](#)(9) as it has effect in EU law as amended from time to time;

“make available on the market” means the supply of a construction product for distribution or use on the market in the course of a commercial activity, whether in return for payment or free of charge (and related expressions must be construed accordingly);

“manufacturer” has the same meaning as in the 2011 Regulation as it had effect immediately before exit day;

“market surveillance authority” means the Secretary of State or an enforcement authority as defined in the 2013 Regulations;

“notified body” has the same meaning as in the 2011 Regulation as it had effect immediately before exit day;

“placing on the market” means the first making available of a construction product on the market (and related expressions must be construed accordingly);

“pre-exit period” means the period beginning with 1 July 2013 and ending immediately before exit day;

“relevant certificate” means a certificate of constancy of performance of the construction product or a certificate of conformity of the factory production control;

“UK notified body” means a body which the Secretary of State had before exit day notified to the European Commission and the member States, in accordance with Article 39 of the 2011 Regulation as it had effect immediately before exit day.

(9) OJ L 88, 4.4.2011, p. 5–43.