

EXPLANATORY MEMORANDUM TO
THE CONSTRUCTION PRODUCTS REGULATIONS 2013

2013 No. 1387

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 This instrument makes the provision necessary for the operation in the United Kingdom of a new EU Regulation on construction products that comes into force on 1 July 2013. It revokes the instrument which implemented the previous EU Directive on this topic, but consolidates certain provisions of that instrument in updated form.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 None

4. **Legislative Context**

- 4.1 Regulation (EU) No 305/2011 of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC, (“the 2011 Regulation”) was formally adopted in April 2011 and will apply in full from 1 July 2013. Council Directive 89/106/EEC on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products (“the Directive”) was implemented by the Construction Products Regulations 1991 (S.I. 1991/1620, as amended) (“the 1991 Regulations”). This instrument makes the necessary provision for the operation of the 2011 Regulation in the United Kingdom. It revokes the 1991 Regulations, but consolidates provisions of those Regulations on market surveillance and enforcement in updated form for the purposes of the 2011 Regulation.

5. **Territorial Extent and Application**

- 5.1 This instrument applies to all of the United Kingdom.

6. **European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 The Directive introduced the concept of CE marking for construction products as a “passport” entitling products to be placed legally on the market in any Member State. The 2011 Regulation will, from 1 July 2013, require construction products to be CE marked when they are placed on the market in all cases where a harmonised European standard exists for the product. This is the most important single change for the United Kingdom where, under our transposition of the Directive in the 1991 Regulations, CE marking has not been compulsory, provided that a product satisfies specified requirements “the essential requirements”, relating to safety and to health and environmental factors. The 2011 Regulation also places duties on a wider range of economic operators (importers and distributors as well as manufacturers) to ensure that the CE marking requirements and associated obligations are met.

7.2 The Directive will be repealed on 1 July 2013 and we are revoking our UK Regulations on that date. The 2011 Regulation places duties on us to provide arrangements for market surveillance and we are obliged under the Treaties to provide adequately for the enforcement of the provisions of the Regulation. We are meeting these obligations by consolidating the corresponding provisions of the 1991 Regulations, modifying and extending them as far as is needed to cover changes introduced by the 2011 Regulation.

7.3 Chapter 1 of Part 2 has been substantially rewritten as compared with the 1991 Regulations to reflect the new duties on economic operators laid down in the 2011 Regulation and certain new offences have been put in place to ensure the adequate enforcement of these duties. The provisions for service of suspension notices, prohibition notices and notices to warn and application for forfeiture in chapter 2 of Part 2 have been adapted accordingly. In particular the grounds for service of notices (Schedule 1) have been modified to reflect the changes in Chapter 1 and have been expanded to encompass new obligations under the 2011 Regulation that are not enforced by individual offence provisions. The enforcement provisions in Part 3 and the miscellaneous and supplemental provisions in Part 4 are very closely based on similar provisions in the 1991 Regulations. Essentially the enforcement processes remain unchanged and penalty levels are no higher.

- *Consolidation*

7.4 Not applicable

8. Consultation outcome

8.1 The Department consulted on the proposal for the EU Construction Products Regulation (COM (2008) 311 final) when it was introduced by the Commission in 2008. The key provisions in the final text of the 2011 Regulation are unchanged from those in the proposal on which the Department consulted. There is no choice about revoking the provisions in UK regulations that transpose the Directive and the Department is making the minimum changes necessary to update the market surveillance and enforcement provisions.

8.2 The Department has discussed the details of the new instrument with key partners: manufacturers and distributors via the Construction Products Association, trading standards contacts, the devolved administrations and other Government departments. A number of drafting changes have been made as a result.

9. Guidance

9.1 As the EU Construction Products Regulation is an evolution from the Directive it repeals, the central concepts are already familiar to those working in the sector. However, we recognise that the changes it makes may require some explanation and we have looked to ensure that guidance is in place to provide this.

9.2 The Department has contributed to guidance on the EU Regulation which has been issued by industry including that by the Construction Products Association <http://www.constructionproducts.org.uk/publications/industry-affairs/display/view/construction-products-regulation/>

9.3 The Department has also been working closely with local authority trading standards services, the Trading Standards Institute and the Association of Chief Trading Standards Officers/National Trading Standards Board to explain the 2011 Regulation. The Department is conscious too that these key partners in their normal business activities have the opportunity to pass on their understanding, including to SMEs who are often difficult to reach.

10. Impact assessment

10.1 The costs to business arise from the 2011 Regulation and relate principally to the product testing requirements that underpin CE marking. We published a consultation impact assessment on the Commission's proposal in 2008 and a final assessment in 2009.

10.2 In the Department's view, the costs to business that could be attributed to the proposed UK regulations are negligible, i.e. time cost of familiarising themselves with them. The costs to business as a result of enforcement under the proposed UK regulations would be as a result of possible transgressions (i.e. voluntary actions), as now.

10.3 As regards public sector impacts, The Department currently has a policy of a risk-based approach to checking by trading standards and we have no plans to change that approach. The Department is aware that local authority trading standards services are already familiar with CE marking of products and the Construction Products Directive, and are using continuous professional development to refine their knowledge in preparation for the 2011 Regulation. The Department has been working with the profession to see what more can be done centrally to help with this.

10.4 For all these reasons the Department has not prepared a further impact assessment for the UK regulations.

11. Regulating small business

11.1 This legislation applies to small business.

11.2 To minimise the impact on micro-enterprises, the 2011 Regulation provides for them to use simplified procedures to demonstrate the performance of their products, in cases where their products are not safety-critical. There are also derogations from CE marking requirements for individually manufactured products and products manufactured in a traditional manner.

11.3 The derogations are reflected in this instrument: there is no offence in relation to CE marking where they apply.

12. Monitoring & review

12.1 The European Commission will submit a report to the European Parliament and the Council on the implementation of the 2011 Regulation by April 2016, on the basis of reports provided by Member States and by other relevant stakeholders, accompanied where relevant, by appropriate proposals. This instrument will be reviewed in this context, and also makes provision for review by the Secretary of State at intervals of not more than five years.

13. Contact

Anthea Nicholson at the Department for Communities and Local Government
Tel: 0303 444 1767 or email: anthea.nicholson@communities.gsi.gov.uk can answer any queries regarding the instrument.