

EXPLANATORY MEMORANDUM TO
THE CONSTRUCTION PRODUCTS (AMENDMENT ETC.) (EU EXIT)
REGULATIONS 2020
2020 No.

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The main purpose of this instrument is to update amendments in the Construction Products (Amendments etc.) (EU Exit) Regulations 2019 (S.I. 2019/465) (“the 2019 Regulations”). The instrument additionally ensures that Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011, which lays down harmonised conditions for the marketing of construction products and repeals Council Directive 89/106/EEC as it has effect in EU law as amended from time to time (“the EU Construction Products Regulation”) continues to apply in Northern Ireland in accordance with the Ireland/Northern Ireland Protocol to the EU Withdrawal Agreement.
- 2.2 This instrument uses powers in the European Union (Withdrawal) Act 2018 to amend the 2019 Regulations before they come into force, and to make additional provisions in relation to Northern Ireland. Broadly the amendments in this instrument restrict the amendments in the 2019 Regulations (which, as drafted, applied to the United Kingdom) so they have effect in relation to Great Britain only from IP completion day. In relation to Northern Ireland they provide an enforcement regime in relation to EU construction products law to replace the Construction Products Regulations 2013 (S.I. 2013/1387). These provisions come into force before IP completion day.
- 2.3 Explanations

What did any relevant EU law do before IP completion day?

- The 2019 Regulations (which are not yet in force) corrected deficiencies in EU law (such as removing references to the European Union) on the basis that EU law would cease to apply across the United Kingdom.
- In terms of what relevant EU law did before IP completion date, the EU Construction Products Regulation is an EU regulation that was directly applicable in the UK. It seeks to remove technical barriers to the trade of construction products in the European single market.
- The EU Construction Products Regulation “lays down harmonised rules for the marketing of construction products in the EU. The Regulation provides a common technical language to assess the performance of construction products. It ensures that reliable information is available to professionals, public authorities, and consumers, so they can compare the performance of products from different manufacturers in different countries”.

- The European Commission requests European standardisation bodies to produce harmonised European standards for construction products (which define the methods and the criteria for assessing the performance of the product in relation to its “essential characteristics”). The British Standards Institution participates in this process. If the European Commission is content that the standard produced conforms to its request, it publishes the reference to the standard.
- Where a harmonised standard exists for a product the EU Construction Products Regulation places obligations on manufacturers, distributors and importers of that product when it is placed on the market. It must have a declaration of performance and have been affixed with a ‘CE’ mark.
- In order to safeguard the reliability of the declaration of performance, the EU Construction Products Regulation provides for systems of “Assessment and Verification of Constancy of Performance”. Where third party assessment of the performance of construction products is required it may only be undertaken by authorised Conformity Assessment Bodies (known as ‘notified bodies’). Notified bodies are designated by an EU Member State and their competence is then recognised across the EU. Member States must inform the European Commission when a body is accredited, hence they are known as notified bodies.
- The EU Construction Products Regulation also allows manufacturers to affix a CE mark to products that are not fully covered by a harmonised standard. This is by applying for a technical assessment of their product based on a ‘European Assessment Document’ which are devised by the group of ‘technical assessment bodies’.
- The enforcement of the EU Construction Products Regulation is undertaken by Trading Standards in England, Wales and Scotland and by district councils in Northern Ireland. The enforcement regime is provided for in domestic regulations: The Construction Products Regulations 2013 (S.I 2013/1387).
- Under the European Union (Withdrawal) Act 2018 directly applicable EU law (such as the EU Construction Products Regulation) becomes part of the law in the United Kingdom.
- Under the Ireland/Northern Ireland Protocol to the Withdrawal Agreement (see paragraph 4 of Article 5 together with the references to construction products legislation in Annex 2 to the Protocol) relevant EU law for construction products will continue to apply in Northern Ireland after IP completion day.

Why is it being changed?

As relevant EU law in relation to construction products will continue to apply in Northern Ireland it is necessary to amend the 2019 Regulations so the amendments within them have effect in relation to Great Britain, not the United Kingdom.

These changes are necessary to ensure that the law in the United Kingdom functions correctly after IP completion day.

What will it now do?

This instrument uses powers in the European Union (Withdrawal) Act 2018 to make necessary changes to the 2019 Regulations. In particular the instrument amends provisions of the 2019 Regulations so they have effect in relation to Great Britain only.

The instrument also makes provisions to implement the Ireland/Northern Ireland Protocol to the Withdrawal Agreement in relation to construction products. In particular, the instrument provides a number of provisions which explain how the EU Construction Products Regulation is to be read in order to reflect the Protocol, including providing in certain cases for CE marking to be accompanied by the UK(NI) indication. (It should be noted that in defining the UK(NI) indication this instrument refers to the Product Safety and Metrology etc. (Amendment etc.) (UK(NI) Indication) (EU Exit) Regulations 2020 which sets out the form etc of the new UK(NI) indication. A draft of those Regulations was laid in Parliament for the approval of both Houses on 14 October 2020). The instrument also restates the enforcement provisions in respect of Northern Ireland in relation to the EU Construction Product Regulation while applying the new domestic construction product law in Great Britain.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes Scotland and Northern Ireland.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 The Minister of State for Housing, for the Ministry of Housing, Communities and Local Government, Mr Christopher Pincher MP, has made the following statement regarding human rights:

“In my view the provisions of the Construction Products (Amendment etc.) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

6.1 This instrument is made in exercise of powers in sections 8 and 8C of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

6.2 The European Union (Withdrawal) Act 2018 makes provision for repealing the European Communities Act 1972 and will preserve EU law, as it stands at the moment the implementation period ends, in UK law. The European Union (Withdrawal) Act 2018 creates a new body of domestic legislation from directly applicable EU law being brought into domestic legislation, as well as saving EU-derived domestic

legislation which was made to implement the UK's obligations as a member of the European Union; together this will be retained EU law.

- 6.3 The European Union (Withdrawal) Act 2018 contains a temporary power to make secondary legislation to deal with deficiencies in this retained EU law, to make provision to implement the Withdrawal Agreement and Ireland/Northern Ireland Protocol. Under the Withdrawal Agreement EU law in the field of construction products continues to apply in Northern Ireland, consequently this instrument makes a number of amendments to legislation in the field of construction products in order to ensure that the legislation continues to function properly in Great Britain following the end of the implementation period. The instrument in particular amends amendments in the 2019 Regulations which were identified as deficiencies in the legislation, as it will apply in Great Britain, arising from that withdrawal from the European Union. In relation to Northern Ireland, the instrument provides a number of provisions which explain how the EU Construction Products Regulation is to be read in order to reflect the Ireland/Northern Ireland Protocol. It also restates the provisions for continuing to enforce the EU construction product law in relation to Northern Ireland

7. Policy background

What is being done and why?

- 7.1 This instrument makes amendments to the 2019 Regulations which corrected deficiencies in certain construction products legislation and implement the Ireland/Northern Ireland Protocol to the Withdrawal Agreement. The purpose of the amendments is to ensure that the relevant legislation is still operable i.e. it remains coherent and workable following the end of the implementation period. Details of the amendments are set out in paragraph 2 above.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made using the power in sections 8 and 8C of, and paragraph 21 of Schedule 7 to, of the European Union (Withdrawal) Act 2018 in order to amend the 2019 Regulations which addresses deficiencies in retained EU law arising from the withdrawal of the United Kingdom from the European Union and implement the Ireland/Northern Ireland Protocol to the Withdrawal Agreement. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in the Annex to this memorandum.

9. Consolidation

- 9.1 There are no current plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

- 10.1 A public consultation was not considered necessary because the instrument makes minor technical amendments to an existing regime to maintain the status quo as far as possible. No impact upon stakeholders is envisaged. The devolved administrations were consulted from an early stage and are content with the approach taken.

11. Guidance

- 11.1 The department published guidance to the industry on the 1st September 2020 on GOV.UK detailing the changes that will be implemented next year and how to prepare for them.

12. Impact

- 12.1 This instrument amends the 2019 regulations so that they have effect in relation to Great Britain only from IP completion day.
- 12.2 In relation to Northern Ireland, it provides for an enforcement regime in relation to the EU Construction Products Regulation to replace the Construction Products Regulations 2013 (S.I. 2013/1387). These amendments allow the existing regime to continue largely unchanged once the implementation period has ended, and are necessary to implement the Ireland/Northern Ireland Protocol to the EU Withdrawal Agreement.
- 12.3 There may be small one-off costs for organisations to familiarise themselves with the changes but we do not envisage significant long-term costs as a result of the measures in this instrument, as they are of a technical nature that allow the existing regime to function after withdrawal from the EU.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses, however the amendments introduced by this instrument seek mainly to maintain the way the current regimes function. As such it is not necessary to take any steps to minimise impacts. The approach of this instrument (i.e. to ensure the continuation of the relevant regimes as they currently function) will be communicated to the public in order to mitigate the risk of confusion or costs incurred.
- 13.2 To minimise the impact of the requirements on micro-enterprises the construction product regulations provides for them to use simplified procedures to demonstrate the performance of their product, in cases where their products are not safety-critical. There are also derogations from product marking requirements for individually manufactured products, and for products manufactured in a traditional manner.

14. Monitoring & review

- 14.1 As this instrument is made under the European Union (Withdrawal) Act 2018 no review clause is required.

15. Contact

- 15.1 Lindsey Lewis at the Ministry of Housing, Communities and Local Government can be contacted with any queries regarding the instrument. Telephone: 07458 009164 or email: lindsey.lewis@communities.gov.uk.
- 15.2 Camilla Sheldon, Deputy Director of the Building Safety Portfolio at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Christopher Pincher MP at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

Annex 1

Statements under the European Union (Withdrawal) Act 2018

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

- 1.1 The Minister of State for Housing for the Ministry of Housing, Communities and Local Government, Mr Christopher Pincher MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- “In my view the Construction Products (Amendment etc.) (EU Exit) Regulations 2020 do no more than is appropriate”.
- 1.2 This is the case because the amendments the instrument makes are no more than is strictly necessary to ensure the legislation amended in the instrument is amended correctly at the end of the implementation period. In particular the amendments update references in UK legislation (as it applies in Great Britain) to EU law to reflect the UK leaving the European Union.

2. Good reasons

- 2.1 The Minister of State for Housing for the Ministry of Housing, Communities and Local Government, Mr Christopher Pincher MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.
- 2.2 These are ensuring that the legislation amended by this instrument continues to function correctly after IP completion day and ensuring clarity for the public and stakeholders.
- 2.3 In particular the amendments update references in UK legislation to EU law to reflect the UK leaving the European Union, and create a criminal offence in relation to the new UK(NI) indication.

3. Equalities

- 3.1 The Minister of State for Housing for the Ministry of Housing, Communities and Local Government, Mr Christopher Pincher MP, has made the following statement:
- “The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”
- 3.2 The Minister of State for Housing for the Ministry of Housing, Communities and Local Government, Mr Christopher Pincher MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Christopher Pincher MP, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

4. Explanations

- 4.1 The explanations statement has been made in paragraph 2 of the main body of this explanatory memorandum.