

Questions from the Product Safety and Metrology Seminar – Monday 23 November 2020

During the Product Safety and Metrology Seminar that took place on Monday 23 November 2020, delegates posted a series of questions in the 'chat function'. This document provides a record of those questions and provides a response by directing delegates to further sources of guidance and providing extracts relevant to the questions posed.

Weights & Measures

“e” mark

Q: Are UK packers still able to use the 'e' mark?

Q: Is it correct that the importer in UK & EU of 'e' marked packaged goods are responsible for ensuring they meet the legal requirements?

Q: If 'e' marked goods are sent to NI is there an importer? If the 'e' marked goods then go onto EU who is the exporter and importer?

A: The Government has published guidance on The Weights and Measures (Packaged Goods) Regulations, the link can be found here: -
<https://www.gov.uk/guidance/product-safety-and-metrology-from-1-january-2021-great-britain#metrology-weights-and-measures>

There are no changes to the requirements as a result of the changes to the legislation.

Q: A GB manufacture/packer has been told by their Spanish supermarket customer that they will only accept products that have the 'e' mark. Is this correct?

A: In addition to the answer above, the requirement for 'e' marking would be a contractual matter between businesses.

Notified Bodies and Approved Bodies

Q: Can any organisation in GB or NI remain as Notified Bodies, or is this status only reserved for organisations based in an EU country?

A: The Government has published guidance on the implications for Conformity assessment bodies and their change of status from 1 January 2021, the link can be found here:
<https://www.gov.uk/guidance/conformity-assessment-bodies-change-of-status-from-1-january-2021>

From 1 January 2021 any mandatory third-party conformity assessment for the EU market will need to be carried out by an EU-recognised conformity assessment body.

This includes both EU based bodies and bodies in countries with which the EU has concluded a mutual recognition agreement.

UK conformity assessment bodies will no longer be able to carry out mandatory conformity assessment for products being placed on the EU market unless this is agreed in any UK/EU future trade negotiations.

Q: Will there be a mutual recognition of conformity assessment bodies that will allow current UK Notified Bodies to carry on working in the EU?

A: Any mutual recognition related to conformity assessment would be dependent on the outcome of any UK/EU future trade negotiations.

Q: What is the process for UK approved bodies certifying CE marked goods. And what is the difference between a UK Approved Body and a UK Notified Body?

A: Conformity assessment bodies based in the UK will become UK 'Approved Bodies' for conformity assessment under the new UK framework, unless they indicate they don't want to be. All Approved Bodies will be listed on gov.uk

UK-based notified bodies will become UK approved bodies and will keep the same 4-digit identification number as they have now.

Q: What is the validity of NAWI/MID type examination certificates issued by an EU based Notified Body after 1 January 2021?

A: Any mutual recognition will be negotiation dependent. The linked below provides guidance about placing manufactured goods on the market in Great Britain from January 2021

<https://www.gov.uk/guidance/placing-manufactured-goods-on-the-market-in-great-britain-from-1-january-2021>

The guidance advises that for goods placed on the UK market (or in an EU country) before January 2021...these individual goods can continue to circulate on either market until they reach their end user and do not need to comply with the changes that take effect from 1 January 2021' and 'CE marked goods in scope of this guidance that meet EU requirements (where these match UK requirements) can continue to be placed on the GB market until 1 January 2022 where EU and UK requirements remain the same. This includes goods which have been assessed by an EU recognised notified body.'

Q: What is the plan to have all EU type examination certificates converted to GB ones by the 1st January 2022?

A: We have planned to convert EU Type Examination certificates for those businesses who make the request.

The link below provides guidance on Product Safety and Metrology from 1 January 2021: Great Britain specific guides on measuring instruments and non-automatic weighing instruments provides additional detail including that these goods when

lawfully placed on the EEA or UK market with a CE marking by 31 December 2021 can continue to circulate on the GB market after this date:

<https://www.gov.uk/guidance/product-safety-and-metrology-from-1-january-2021-great-britain#metrology-weights-and-measures>

Q: Can we assume that "UK Notified bodies" will not be listed on NANDO.?

Q: Will all UK approved bodies be 'notified bodies' for NI conformity assessment - thus those organisations will remain on NANDO?

A: UK notified bodies will no longer be recognised as EU Notified Bodies from 1 January 2021, unless mutual recognition of conformity assessment bodies forms part of a mutual recognition agreement as part of a future UK/EU trade agreement which is the subject of negotiation. UK notified bodies will be able to conformity assess products for the NI market and will apply the CE and UKNI mark. The linked guidance provides more detail.

<https://www.gov.uk/guidance/conformity-assessment-bodies-change-of-status-from-1-january-2021>

The guidance advises 'The government is setting up a new domestic UK database to replace the EU's NANDO database.'

Q: Have any UK Notified Bodies given any indication they do not wish to be Approved Bodies?

A: From January 1 2021, all UK based Notified Bodies will automatically become UK Approved Bodies. They do not need to seek re-accreditation in order to benefit from UK approved body status.

It would be a commercial decision for each Approved Body as to whether they wish to retain that status.

OIML

Q: What about normative documents?

A: Normative documents by the 'Organisation Internationale de la Métrologie Légale' (OIML) give presumption of conformity with the essential requirements of the Measuring Instruments Directive 2014/32/EU (MID), implemented by the Measuring Instrument Regulations 2016 (as amended). Normative documents that have been cited in the Official Journal of the EU to give presumption of conformity will be referenced on gov.uk to give presumption of conformity to GB measuring instruments requirements.

UKCA & CE marks

Q: Can a company place a CE mark & a UKCA mark on a product (if they wish to sell on both the GB & EU market), or is only one conformity mark permitted by law?

A: The Government has published guidance covering the use of the UKCA mark and the CE mark.

<https://www.gov.uk/guidance/using-the-ukca-mark-from-1-january-2021>

<https://www.gov.uk/guidance/ce-marking>

The guidance states in reference to selling goods in the EU that “The UKCA marking will not be recognised on the EU market. Products currently requiring a CE marking will still need a CE marking for sale in the EU from 1 January 2021”. Goods can carry both the CE and UKCA markings so long as they are fully compliant with both UK and EU regulations.

Q: In relation to the responsibilities of importers, can the required information relating to the importers name and address be labelled on the packaging?

A: The Government has published guidance covering the responsibilities of manufacturers and importers from 1 January 2021:

<https://www.gov.uk/guidance/product-safety-and-metrology-from-1-january-2021-great-britain#general-product-safety-law>

The guidance advises that manufacturers and importers must [also] allow for traceability by indicating on the product or its packaging, where reasonable to do so. Page 5 and 6 of the guide sets out options for meeting this requirement for a limited time period.

Product Safety

UKCA & CE marks

*Q: Does an **electrical product** have to be UKCA marked if it is placed on the GB market after 1 Jan 2021 or can they still be solely CE marked up until 31 December 2021 (assuming no change in legislative requirements)?*

A: The Government has published guidance covering electrical equipment being supplied in or into GB from 1 January 2021:

<https://www.gov.uk/guidance/product-safety-and-metrology-from-1-january-2021-great-britain#electrical-and-electronic>

Part 9 of the guidance advises 'CE marking based on self-declaration of conformity by the manufacturer is still possible until 31 December 2021 for the GB market'

Q: Will it be an offence to apply a UKCA mark to inappropriate goods i.e., GPSR regulated goods?

A: The government has published guidance covering use of the UKCA mark:

<https://www.gov.uk/guidance/using-the-ukca-mark-from-1-january-2021>

The guidance advises the following:

- UKCA markings must only be placed on a product by the manufacturer or the authorised representative (where allowed for in the relevant legislation);
- when attaching the UKCA marking, the manufacturer (or authorised representative if applicable) takes full responsibility for the product's conformity with the requirements of the relevant legislation;
- **UKCA marking must only be used to show product conformity with the relevant UK legislation;**
- there should not be any marking or sign that may misconstrue the meaning or form of the UKCA marking to third parties
- there should not be other markings on the product which affect the visibility, legibility or meaning of the UKCA marking
- **the UKCA marking cannot be placed on products unless there is a specific requirement to do so in the legislation**

*Q: What about **fireworks**? Importation of fireworks from China or EU only recently moved to CE marks?*

A: Further guidance on this will be published in due course. From 1 January 2021 to 31 December 2021, pyrotechnic articles may continue to be sold having been conformity assessed and having CE marking by existing third-party conformity assessment bodies.

*Q: What will a **toy** importer who imports CE marked toys from outside the EU have to change and when will he have to do it by?*

A: The Government has published guidance covering toys being supplied in or onto GB from 1 January 2021: Great Britain - Toys:

<https://www.gov.uk/guidance/product-safety-and-metrology-from-1-january-2021-great-britain#toys>

It advises on the obligations of importers.

Q: From 1 Jan 2022 will UK businesses need to have separate labelling (UKCA vs CE) and conformity assessment (one for UK and one for EU) for what is likely to be exactly the same product?

A: Government has published guidance that covers placing manufactured goods on the market in Great Britain and placing manufactured goods on the EU market from 1 January 2021:

<https://www.gov.uk/guidance/placing-manufactured-goods-on-the-market-in-great-britain-from-1-january-2021>

<https://www.gov.uk/guidance/placing-manufactured-goods-on-the-eu-market-from-1-january-2021>

The guidance states in reference to selling goods in the EU that 'The UKCA marking will not be recognised on the EU market. Products currently requiring a CE marking will still need a CE marking for sale in the EU from 1 January 2021'. For certain manufactured goods placed on the GB market from 1 Jan 2022, UKCA is the accepted marking. Goods can carry both the CE and UKCA markings so long as they are fully compliant with both UK and EU regulations.

Q: Does a product have to be manufactured / processed in Northern Ireland to qualify for the CE & UKNI to be affixed?

A: Government has published that covers placing manufactured goods on the market in Northern Ireland from 1 January 2021:

<https://www.gov.uk/guidance/placing-manufactured-goods-on-the-market-in-northern-ireland-from-1-january-2021>

The guidance covers conformity assessment and the use of CE & UKNI marking for placing certain goods on the Northern Ireland market (the relevant factor is where the goods are placed on the market rather than where they are manufactured)

Q: So, CE & UKNI marked goods cannot be sold in the EU. They can only be sold in NI or GB.

A: Government has published guidance that covers placing manufactured goods on the market in Northern Ireland from 1 January 2021:

<https://www.gov.uk/guidance/placing-manufactured-goods-on-the-market-in-northern-ireland-from-1-january-2021>

The guidance includes advice on when, and when not, to use the UKNI marking alongside the CE marking:

You need to use the UKNI marking (alongside the CE marking) if all of the following apply:

- you are placing certain goods (mostly those goods subject to the CE marking) on the Northern Ireland market from 1 January 2021
- your goods require mandatory third-party conformity assessment
- you are planning to use a UK notified body to carry out those conformity assessments from 1 January 2021

You will not be able to use the UKNI marking if either of the following apply:

- you are placing goods on the market in the EU
- you are planning to use an EU body to carry out conformity assessment

Q: Can a product carrying a CE and UKCA marking be sold in NI even if it does not carry the UKNI marking after 2021?

A: The Government has published guidance that covers the use of the UKCA mark and the CE mark.

<https://www.gov.uk/guidance/using-the-ukca-mark-from-1-january-2021>

<https://www.gov.uk/guidance/ce-marking>

Goods placed on the NI market can carry both the CE and UKCA markings so long as they are fully compliant with both UK and EU regulations. Goods carrying the UKCA marking alone cannot be placed on the NI market from 1 January 2021. The UKNI mark can only be applied alongside the CE mark when the conformity assessment has been carried out by a UK Notified Body.

The below linked guidance placing manufactured goods on the market in Northern Ireland, includes advice on the circumstances goods with CE marking can be placed on the market in Northern Ireland (and the EU).

<https://www.gov.uk/guidance/placing-manufactured-goods-on-the-market-in-northern-ireland-from-1-january-2021>

Q: Can UKCA marked goods circulate on the NI market? or is it only CE or CE and UKNI marked goods?

A: The below linked guidance covers placing manufactured goods on the market in Northern Ireland:

<https://www.gov.uk/guidance/placing-manufactured-goods-on-the-market-in-northern-ireland-from-1-january-2021>

It includes advice on conformity assessment and marking, including that the UKCA marking cannot be used for goods placed on the Northern Ireland market.

Q: If CE marked goods are manufactured in NI and have unfettered access to the GB (England, Scotland and Wales) won't there be confusion in the market with CE products being placed on the GB market?

A: Further guidance on unfettered access and NI qualifying goods will be issued shortly.

Q: As the UKCA mark cannot be used in Northern Ireland, why is it not called the GBCA mark?

A: The UKCA marking was initially designed in the run-up to a potential no deal exit and would have applied to the whole of the UK. We know that some businesses had already started implementing the marking so it would have been unnecessarily disruptive to change the marking. We would also note that the arrangements that apply to NI may change over time. The Protocol is based on the principle of consent: the special arrangements in it only remain in place for as long as the representatives of the people of Northern Ireland vote to continue them.

Investigation and enforcement

Q: From an investigation and enforcement perspective will there be changes in respect to Consumer Rights Act (CRA) s15 and TS as a Market Surveillance Authority i.e., certain exemptions from CRA when conducting MS activities?

A: The substantive rules will not change.

Q: Will there be much change to the use or wording of certain notices under GPSR or CPA that we may currently use?

A: OPSS is currently updating template notices on Regulators Companion to reflect any necessary changes. This will be available in the near future with relevant stakeholders being notified.

Cosmetics

Q: How are you defining industry in relation to cosmetics? There are many small cosmetics manufacturers who may not necessarily be aware of the situation.

A: The substantive requirements of the legislation will not change, the responsibilities on those who manufacture cosmetics apply to all, including small manufacturers. Local Authority trading standards teams should share the guidance (link below) with cosmetics manufacturers based in their area.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/936674/Guide-to-cosmetics-2013.pdf

Q: Cosmetics manufacturers and importers will have 3 months to submit the required information for every product that they are currently supplying. What will be the consequences for those that have not been?

A: The guidance for placing cosmetic products on the GB market covers the need to notify products placed on the GB market:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/936674/Guide-to-cosmetics-2013.pdf

As it is a requirement, failure to do so would be a non-compliance. Local Authorities are being encouraged to work with businesses to support them in making the necessary changes and exercising discretion in accordance with their compliance and enforcement policies.

Q: When will the Submit Cosmetic Product Notification service be available to GB businesses/LAs?

A: The service will be live for businesses and local authorities from 1 January 2021.

Q: Will more than one LA officer have access to Submit Cosmetic Product Notification service?

A: Arrangements for Local Authority access are still being finalised, but access will not be limited to only one officer

EU harmonised standards and UK designated standards

Q: Will designated standards become commercial copyrighted documents requiring purchase, like harmonised standards are currently, or will they be made freely available to business?

A: EU harmonised standards will become Designated standards recognised in Great Britain (England, Scotland and Wales) following the end of the Transition Period. On

1 January 2021 the UK standards will be the same in substance and with the same reference as the standards used in the EU. However, they will use the prefix 'BS' to indicate that they are standards adopted by the British Standards Institution as the UK's national standards body.

There will be around 4000 designated standards in 48 categories and sub-categories. The references to the standards are being published on GOV.UK in concise lists (as PDFs) and in more detailed lists (as Open Document Spreadsheets) for use by businesses. The standards will continue to be available from BSI as currently.

The use of designated standards by businesses remains voluntary. Local authority trading standards teams can access relevant BSI standards at no cost.

Q: Are the British Standard Institution (BSI) still going to be a member of CEN?

A: BSI's membership of CEN and CENELEC continues beyond the end of the EU exit transition period. The General Assemblies of CEN and CENLELEC have set a timeframe to update the organizations' statutes in response to the UK's exit from the EU. This will run until the end of 2021, enabling the UK's continued influence over standards produced in CEN and CENELEC, providing stability and certainty for their stakeholders. BSI is confident its membership will continue beyond that time and are working with the other CEN and CENELEC members to ensure the best outcome for the UK.

Online

Q: *What guidance is available for those businesses who sell online from EU into UK, and vice versa?*

A: UK businesses will have to comply with the established legislation for placing products on the relevant markets:

<https://www.gov.uk/guidance/placing-manufactured-goods-on-the-eu-market-from-1-january-2021>

<https://www.gov.uk/guidance/placing-manufactured-goods-on-the-market-in-great-britain-from-1-january-2021>

There is no barrier to double marking or obtaining approvals to sell the same product in different markets.

Q: *Can products placed on the market 'on line' for NI with CE marks have unfettered access to the GB market?*

A: Further guidance on unfettered access and NI qualifying goods will be issued shortly.

Authorised representative

Q: Must the "Authorised Representative" be based in GB or NI for the GB market. What qualifies as "based in GB", would an accountant's details, or services mailbox suffice?

A: There is no change in requirements. Further advice is available in the specific guides published by Government:

<https://www.gov.uk/guidance/product-safety-and-metrology-from-1-january-2021-great-britain>

Fulfilment houses

Q: Will the status of fulfilment houses change from 1 January 2021 - what will their responsibilities be?

A: The substantive requirements remain the same. The fulfilment house will have to comply with the relevant legislation depending on the activities they undertake in their business i.e., whether they are an importer, distributor, or postal service.

<https://www.gov.uk/guidance/placing-manufactured-goods-on-the-market-in-great-britain-from-1-january-2021>