

SCHEDULE 1

Amendments to the 2011 Regulation

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⁽¹⁾;

“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](#)⁽²⁾ 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);

(1) 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.

(2) OJ L 88, 4.4.2011, p. 5–43.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Construction Products (Amendment etc.) (EU Exit) Regulations 2019 No. 465*

“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.