

**EXPLANATORY MEMORANDUM TO**  
**THE TREATMENT OF CONFORMITY ASSESSMENT BODIES**  
**(COMPREHENSIVE AND PROGRESSIVE AGREEMENT FOR TRANS-PACIFIC**  
**PARTNERSHIP) REGULATIONS 2024**

**2024 No. 504**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Business and Trade and is laid before Parliament by Command of His Majesty.

**2. Declaration**

- 2.1 Minister Greg Hands, Minister of State at the Department for Business and Trade confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Rebecca Bradfield, Deputy Chief Executive - Policy for Office for Product Safety and Standards, at the Department for Business and Trade confirms that this Explanatory Memorandum meets the required standard.

**3. Contact**

- 3.1 Yasmine Dong at the Department for Business and Trade email: [Yasmine.dong@businessandtrade.gov.uk](mailto:Yasmine.dong@businessandtrade.gov.uk) can be contacted with any queries regarding the instrument.

**Part One: Explanation, and context, of the Instrument**

**4. Overview of the Instrument**

*What does the legislation do?*

- 4.1 This statutory instrument will implement Article 8.6 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) by giving Conformity Assessment Bodies (CABs) located in other CPTPP parties' territories, treatment at least as favourable as it gives to CABs based in the UK. This is often referred to as "national treatment of CABs" or "NTCABs".
- 4.2 To implement the UK's obligations in Article 8.6 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), DBT must amend the current requirement under several pieces of legislation that Conformity Assessment Bodies (CABs) be based in GB or the UK, to allow these bodies to also be based in the territories of parties to CPTPP.
- 4.3 The Department for Business and Trade (DBT) is leading on implementation to achieve this for other sectors by working with the Department for Energy Security and Net Zero, the Department for Environment Food and Rural Affairs, the Department for Levelling Up, Housing and Communities, the Department for Transport, and the Health and Safety Executive.
- 4.4 The instrument will come into force immediately after the Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Act 2024 (the Act) comes into force in accordance with its section 7(1).

*Where does the legislation extend to, and apply?*

- 4.5 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales and Scotland.
- 4.6 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales and Scotland.
- 4.7 In Northern Ireland, Regulation (EC) No. 305/2011 of the European Parliament and of the Council continues to apply. Under the Windsor Framework, only EU legislation relating to conformity assessment of goods, as listed in Annex 2 of the Framework, applies in Northern Ireland. Therefore, the clause will not apply in Northern Ireland.

**5. Policy Context**

*What is being done and why?*

- 5.1 Conformity assessment is any procedure used to determine that relevant requirements in technical regulations or standards are fulfilled. It provides assurance that what is being supplied meets the expectations specified in legislation. It includes activities such as testing, inspection and certification and can be applied to products, services, processes, systems, bodies, and people.
- 5.2 Accreditation in the UK is a public interest activity that provides a formal evaluation of a CAB's competence to carry out certification, inspection and testing of products.
- 5.3 Chapter 8 of the CPTPP facilitates greater transparency and information-sharing between CPTPP Parties about their domestic regulations and encourages communication between Parties once measures are in place. The Chapter will help provide regulatory predictability for businesses and reduces the likelihood of new barriers forming.
- 5.4 This Chapter requires that CPTPP Parties treat Conformity Assessment Bodies (CABs) located in another Member country no less favourably than their own domestic CABs. This means that, where a CPTPP Member might restrict accreditation and approval to a CAB located in their own territory, the Chapter requires that foreign CABs receive the same treatment. In this way, UK CABs will be able to apply for accreditation and approval across CPTPP Member countries, and vice versa.

*What was the previous policy, how is this different?*

- 5.5 To become approved, a CAB typically requires accreditation from the UK Accreditation Service (UKAS). UKAS is the UK's National Accreditation Body and acts independently of government, operating under a Memorandum of Understanding between UKAS and DBT. UKAS is empowered to accredit CABs against specific standards; accreditation in the UK is a public interest activity that provides a formal evaluation of a CAB's competence to carry out certification, inspection and testing of products.
- 5.6 UKAS issues documentation to a CAB indicating that it is accredited and will make a recommendation to the relevant Government Department. Once UKAS has issued an accreditation certificate to a CAB, the relevant Department can choose to use that accreditation as evidence that a CAB should be approved. The CAB can then be approved by the Government Department or Agency responsible for approving CABs for the relevant sector. In most cases, this is DBT. Once this approval process is complete, the Secretary of State formally appoints the CAB, and its details appear on the UK Market Conformity Assessment Bodies database as an approved CAB

recognised for third-party conformity assessment against technical regulations applicable in Great Britain.

- 5.7 The UK's accession to CPTPP means that it is obliged to give Conformity Assessment Bodies (CABs) located in other CPTPP parties' territories, the same treatment as it gives to its own CABs (national treatment of CABS or "NTCABS").

## **6. Legislative and Legal Context**

### *How has the law changed?*

- 6.1 All the legislation being amended currently includes a restriction on where relevant CABs can be established. This restriction is typically to the UK but in some legislation, it is to GB and in some legislation, it also includes member States. This legislative position arose as a result of the UK's historic implementation of Regulation (EC) No 765/2008<sup>1</sup> (which has subsequently been assimilated into domestic law), at a time when the UK was a member of the EU, as well as subsequent amendments made to account for the UK's departure from the EU.
- 6.2 The UK's accession to CPTPP means that it is obliged, as a matter of international law, to implement various requirements set out in CPTPP, including those in Article 8.6. Paragraph 1 of Article 8.6 requires that each party to CPTPP shall accord to CABs located in the territory of another party treatment no less favourable than that it accords to CABs located in its own territory or in the territory of any other party. As a result, the UK must amend its current domestic legislative requirements which restrict the establishment of CABs, so that they include the territories of parties to CPTPP in scope.
- 6.3 In order to facilitate this implementation, section 2(1) of the Act provides a new power for the Secretary of State to make regulations by SI to amend subordinate legislation in order to implement Article 8.6 of the CPTPP (as defined in the Act). Section 2(2) of the Act supports this by providing a power to make consequential, supplementary, incidental, transitional or saving provision.
- 6.4 This instrument uses the powers in section 2(1) and (2) of the Act to implement Article 8.6 of CPTPP by amending the current legislative requirements which restrict the establishment of CABs, so that they maintain their existing scope but also include the territories of parties to CPTPP.
- 6.5 This instrument also makes additional amendments to the Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003 in order to require that competent laboratories, unless based in the EU, must receive their accreditation from the United Kingdom Accreditation Service. This requirement does not represent a change in policy position as it is currently implied as a result of the existing requirement that competent laboratories must be based in either the UK or the EU. However, the requirement now needs to be made expressly as a result of other changes made by this instrument to permit competent laboratories to additionally be based in the territory of a party to the CPTPP.
- 6.6 This instrument also makes additional amendments to Regulation (EU) No 305/2011<sup>2</sup> (as assimilated into UK law), to require that certain requirements imposed on

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<sup>1</sup> Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and repealing Regulation (EEC) No 339/93.

<sup>2</sup> 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.

technical assessment bodies (“TABs”) are only imposed on TABs which are established in the UK. These requirements only include those requirements imposed on TABs which do not constitute conformity assessment activities and are therefore not within scope of Article 8.6 of the CPTPP. These requirements do not represent a change in policy position as they are currently implied as a result of the existing requirement that TABs must be based in the UK. However, the requirements now need to be made expressly as a result of other changes made by these Regulations to permit TABs to additionally be based in the territory of a party to the CPTPP.

- 6.7 This instrument does not extend or apply to Northern Ireland because, under the terms of the Windsor Framework, Regulation (EU) 2019/1020<sup>3</sup> (which has broadly replaced the relevant provisions of Regulation (EC) No 765/2008 in EU law) applies to the UK in respect of Northern Ireland and dictates the scope of establishment restrictions for CABs. The UK is only obliged to implement the requirements of CPTPP to the extent that they do not conflict with the UK’s existing obligations under the Windsor Framework.

*Why was this approach taken to change the law?*

- 6.8 For some of the legislation being amended, this is the only possible approach to make the necessary changes. In the case of the legislation being amended where other powers are available, it was decided that this approach was the most appropriate and that using the same consistent approach for all would also assist with legal clarity.

## **7. Consultation**

*Summary of consultation outcome and methodology*

*Devolved Administrations (DA)*

- 7.1 The UK government is responsible for negotiating international trade agreements on behalf of all parts of the UK. However, DBT recognises that modern trade agreements interact with areas of devolved competence and that the DAs have interests across a range of areas.
- 7.2 DBT has created engagement structures at all levels to ensure a constructive relationship with the DAs. These include the quarterly Interministerial Group for Trade, regular bilateral meetings between ministers, the six-weekly Senior Officials Group, regular chapter specific policy roundtables and weekly working level engagement.
- 7.3 DAs were consulted regularly after each round of UK accession negotiations. Through this process DA priorities were registered, and the engagement was focused, though not limited, to areas of devolved competence including Sanitary and Phytosanitary Standards; Public Procurement that is not wholly or mainly reserved; Technical Barriers to Trade; Environment and Sustainability; and the Windsor Framework.
- 7.4 After the conclusion of rounds, officials provided updates on the progress made in negotiations, outlined the outstanding issues and took questions on developments. DBT shared negotiated text and market access schedules with DAs ahead of signature, including the Protocol.

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<sup>3</sup> Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011.

### Crown Dependencies and Overseas Territories

- 7.5 The UK is responsible for the international relations and external affairs of Crown Dependencies and Overseas Territories. DBT engaged with those Crown Dependencies and Overseas Territories which sought inclusion in the CPTPP. DBT shared the draft Protocol text with the Crown Dependencies and the Government of Gibraltar whilst officials received regular updates from lead negotiators. This allowed for consultation on territorial application being sought by the respective territories. DBT shared the Protocol prior to signature.

### Other stakeholders

- 7.6 Our CPTPP negotiation strategy was informed by a comprehensive consultation process, where we spoke to businesses and interest groups in every part of the UK. On 20 July 2018, the Department for International Trade (as it was then) launched a public consultation seeking views on the potential accession to the CPTPP for individuals, businesses, business associations, NGOs and public sector bodies. The consultation response, containing a summary of the 149,968 responses, was published in June 2021.
- 7.7 DBT engaged extensively with a range of stakeholders and experts through technical and strategic discussions to inform our negotiations and ensure we were representing the views of sectors across the UK economy. DBT has also continually worked with stakeholders to understand concerns and ensure that our negotiations benefit businesses and consumers across the UK. Our post-round reporting ensured stakeholders were kept up to date. This involved advocacy roundtables with key stakeholders, Advisory Group Updates, and sector-specific briefings.

## **8. Applicable Guidance**

- 8.1 There is no applicable guidance for this instrument.

## **Part Two: Impact and the Better Regulation Framework**

### **9. Impact Assessment**

- 9.1 A full Impact Assessment has not been prepared for this instrument because these regulations set out a technical procedural issue, which in and of itself will have no impact on compliant businesses. Estimates of the impact of the entire Act are set out in the Impact Assessment for the CPTPP Act.

#### *Impact on businesses, charities and voluntary bodies*

- 9.2 There is no, or no significant, impact on business, charities or voluntary bodies.
- 9.3 The legislation does not impact small or micro businesses.
- 9.4 There is no, or no significant, impact on the public sector.

### **10. Monitoring and review**

#### *What is the approach to monitoring and reviewing this legislation?*

- 10.1 The approach to monitoring this legislation is a biennial FTA monitoring report. DBT will publish a comprehensive ex-post evaluation for the agreement within 5 years after the UK's accession. The evaluation report will synthesise findings from monitoring, evaluation, and stakeholder engagement activities to assess the impact of the

agreement and answer DBT's core evaluation questions. Following the report's publication, DBT will conduct engagement activities and consider whether there is a need to follow up with further evaluation activities or take any direct action to improve the CPTPP agreement's implementation.

- 10.2 The instrument does not include a statutory review clause and, in line with the requirements of the instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Kevin Hollinrake MP, Minister of State in the Department for Business and Trade, has made the following statement:

“A review would not be appropriate, given the technical nature of the amendments. However, to ensure that products placed on the GB market are safe the government keeps the regulatory framework under constant review, including the use of specific chemicals in particular products.”

### **Part Three: statements and Matters of Particular Interest to Parliament**

#### **11. Matters of special interest to Parliament**

- 11.1 None.

#### **12. European Convention on Human Rights**

- 12.1 Minister Hands, Minister of State at the Department for Business and Trade has made the following statement regarding Human Rights:

“In my view the provisions of the Treatment of Conformity Assessment Bodies (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Regulations 2024 are compatible with the Convention rights.”

#### **13. The Relevant European Union Acts**

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).