

*Derek Coulson, a Technical Advisor with Safe Machine Ltd, outlines his views of the CE Marking requirements during the Transition period, and the proposed **UK CA Marking of Machinery**, which could replace CE Marking to the Machinery Directive when the UK leaves the EU.*

This article was updated on 14th February 2020 as **Version 3**. The original article was published in January 2019, based on the UK leaving the EU on March 29th, 2019. This was delayed due to the UK Government not having a majority in Parliament and being unable to function correctly. Following a General Election in December 2019, the current Government now have a large majority and can introduce legislation which is likely to be accepted into UK law.

The EU ([Withdrawal Agreement](#)) Bill ratified the Withdrawal Agreement, as agreed between the United Kingdom and the European Union, and implemented the Agreements (EU, EEA EFTA and Swiss) in domestic law. This Bill ensured that the United Kingdom can fulfil its international obligations and leave the European Union with a deal. Following agreement by both Houses on the text of the Bill it received Royal Assent on 23rd January 2020. The Bill is now an Act of Parliament. The UK formally left the EU on 31st January 2020.

There is now a transition period until the end of 2020 whilst the UK and EU negotiate additional arrangements. The current rules on trade, travel, and business for the UK and EU will continue to apply during the transition period. New rules will take effect on 1 January 2021.

Negotiations will commence in March 2020 and continue through the year. At this stage, it is not known what form the negotiations will take, or what sort of deal there may be. The Prime Minister appears to have taken a tough stance and seems to not intend to agree to a Customs Union or accept the EU regulatory system. The [Gov.uk](#) website has the following statements.

'The Government wishes to see a future relationship based on friendly cooperation between sovereign equals for the benefit of all our peoples. There is complete certainty that at the end of 2020 the process of transition to that relationship will be complete and that the UK will have recovered in full its economic and political independence'. And 'Any agreement must respect the sovereignty of both parties and the autonomy of our legal orders. It cannot therefore include any regulatory alignment, any jurisdiction for the CJEU over the UK's laws, or any supranational control in any area...'

When there was the possibility of a 'No Deal' Brexit, The Department for Business, Energy and Industrial Strategy (BEIS) issued a draft [Statutory Instrument](#) (SI). This introduced the UK CA Marking which would replace CE Marking in the UK. The SI covers numerous Regulations that require CE Marking. A Guidance document was issued in September 2019 for Machinery. [Supply Of Machinery \(Safety\) Regulations 2008 Regulations As Amended By The Product Safety And Metrology Etc. \(Amendment Etc.\) \(EU Exit\) 2019](#). Other Regulations have similar Guidance, see [www.gov.uk](#).

If a deal is agreed, it is not clear at the time of writing whether the draft SI will be introduced into UK law. It seems likely that it will, however this is speculation. It is expected that there will be no firm information provided until towards the end of 2020. At this time, it is likely that BEIS will issue further guidance, depending on negotiations. If the negotiations are not going well, the current understanding is the UK may still leave the EU on 31st December without a deal. If there is no deal, it is expected that a version of the draft SI would come into law on 1st January 2021. The statement from the Prime Minister regarding regulatory alignment seems to suggest that CE Marking requirements will be superseded in the UK.

If that is the case, it is likely that the UK CA Marking will be introduced, and the following information will remain broadly applicable. The UK CA Marking should NOT be used until at least the end of the transition period.

CE Marking will no longer be applicable in the UK but will still be required in the EEA and Turkey. A new mark, to be known as the UK CA (UK Conformity Assessed) mark will be introduced in the UK. This mark is still subject to Parliamentary approval.

The proposals affect all manufacturers of machinery supplying into the UK either from within the UK or from outside the UK. Manufacturers should already be CE marking machinery and should hold Technical Files explaining how they meet the Essential Requirements of relevant Directives, along with detail of how machinery is built and what safety measures are implemented.

The logo consists of the letters 'UK' stacked above the letters 'CA' in a bold, black, sans-serif font. The letters are large and blocky, with a slight shadow effect behind them.

Notified Bodies

Where equipment is subject to Notified Body inspection or testing, it is recommended that this is discussed with the Notified Body currently appointed, as soon as possible. UKAS provided the following information on 24th January 2020.

'The UK will be leaving the EU on 31 January 2020 after which the UK will be in a transition period until 31 December 2020. During the transition period nothing will change; there will be no impact on the awarding of UKAS accreditation certificates. The UK Government has confirmed that UKAS role as the national accreditation body will remain as it is now after we leave the EU. UKAS will retain its signatory status to the EA, IAF, and ILAC mutual recognition arrangements.'

This means that the majority of UKAS' accredited activities will continue to be unaffected. UKAS accreditation will continue to be recognised and accreditation certificates will continue to be valid following the UK's departure from the European Union, regardless of whether or not the UK leaves with a deal in place.

At the end of the transition period where EU legislation specifically requires accreditation to be awarded by the national accreditation body of an EU Member State, UKAS accreditation may no longer be recognised depending on the outcome of the Brexit negotiations.

During the transition period, UKAS will continue to work with Government to promote the use and acceptance of UKAS accreditation as part of trade negotiations. Regular updates will appear on the [UKAS website](#).

Existing UK 'Notified Bodies' will become 'Approved Bodies', listed on a UK database (No link available at time of writing). Notified Bodies who become approved bodies will keep the same 4-digit number as they have now.

EU Directives, Regulations and UK Law

For many years, Directives and Regulations have been produced in the EU and adopted in each Member State as laws. Laws in the UK pass through Parliament in the form of bills. Once bills have progressed through all their stages, they become Acts of Parliament. These Acts often confer powers on Ministers to make more detailed orders, rules or regulations by means of Statutory Instruments (SIs).

The scope of these powers varies greatly, from the technical (eg to vary the dates on which different provisions of an Act will come into force, to change the levels of fines or penalties for offences, or to make consequential and transitional provisions) to much wider powers such as filling out the broad provisions in Acts. Often, Acts only contain a broad framework and SIs are used to provide the necessary detail that would be considered too complex to include in the body of an Act.

The Department for Business, Energy and Industrial Strategy (BEIS) is the relevant Government Body, with the Secretary of State for Business, Energy and Industrial Strategy being the Minister responsible for the legislation (Alok Sharma was appointed Secretary of State for Business, Energy and Industrial Strategy on 13th February 2020).

Contents of the draft SI and their implications for the machinery sector

The Regulations are aimed at changing from requiring CE Marking on machinery supplied into the UK, to a new 'UK Compliance Assessed, or UK CA Mark'. There will be changes to other legislation also to support this.

Many of the proposed amendments simply replace terms such as EEA, EU and Community with UK or United Kingdom, terms such as Directive with 'enactments', and have little effect on the physical changes that manufacturers need to make.

What changes will be required?

The following items are where changes may be required; however, these do not appear to be onerous. It is intended that there will be a transition period before UK CA Marking must be applied, the September 2019 Guidance states there will be a 'Deeming' provision. *'Machinery which has undergone full conformity assessment under the equivalent EU requirements and bear the CE conformity mark will be deemed compliant with the UK legislation and can be placed on the UK market as if they had been UKCA conformity marked.'*

This 'deeming provision' will be available for a time-limited period. This will be the subject of amending legislation in the future at a time yet to be decided. The Government will consult with Industry and provide notice before ending this time-limited period'.

Authorised Representative

It is not essential for non-UK or non-EU companies to have an Authorised Representative, but where this course is taken, there will be some changes. Where there is an Authorised Representative, there must be a mandate (a contract by which one person commissions another to act for him gratuitously and the other accepts the commission).

Mandated authorised representatives established in the EEA prior to the UK leaving the EU continue to be recognised by the UK to act in the UK for purposes of the legislation. However, any authorised representatives appointed and mandated after the UK left the EU to act in the UK must be established in the UK to be recognised under UK law.

For partly completed machinery, the responsible person must also ensure that assembly instructions are prepared, and a declaration of incorporation is drawn up.

Businesses with an existing authorised representative based in the EEA can therefore continue to use the same authorised representative. No UK-based authorised representatives are recognised under EU law. This means they cannot carry out tasks on the manufacturer's behalf for machinery being placed on the EU market.

A manufacturer exporting machinery to the EU, who wishes to appoint an authorised representative to carry out tasks for them in respect of that machinery, must appoint an authorised representative in accordance with EU law.

Manufacturers do not need an authorised representative; however, they do need someone identified as the person to compile the technical file on the Declaration. This person must be based in the EU. UK-based companies exporting to the EU should ensure this is done before exit day to ensure that exports can continue. It is not clear whether there will be a transition period allowed by the EU. It is not clear whether market surveillance will be increased on imports to the EU from the UK following Brexit.

It would make sense to hope for the best but plan for the worst.

Standards

The Regulations accept that existing EN or ISO standards will continue to be able to be used to support compliance; however, these will in future be known as 'designated standards'.

A 'designated standard' means a technical specification that is:

- (a) adopted by a recognised standardisation body, for repeated or continuous application, with which compliance is not compulsory; and
- (b) designated by the Secretary of State by publishing the reference to the standard and maintaining that publication in a manner the Secretary of State considers appropriate.

For the purposes of this regulation a 'recognised standardisation body' means any one of the following organisations:

- (a) the European Committee for Standardisation (CEN);
- (b) the European Committee for Electrotechnical Standardisation (Cenelec);
- (c) the European Telecommunications Standards Institute (ETSI);
- (d) the British Standards Institution (BSI).

The Secretary of State may remove from publication the reference to a standard which has been published. Where the Secretary of State removes the reference to a standard from publication, that standard is no longer a designated standard.

It is assumed that this will be done in association with BSI, and a list of standards that support the Essential Requirements be provided, but at present it is not clear where this will be published (probably the BEIS website).

Obligations re Annex IV Machinery

There is an additional Regulation 12A relating to machinery listed in Annex IV which references CE marking and the Directive. For manufacturers using Notified Bodies for Annex IV machinery conformity assessment, it is recommended to consult the Notified Body for more details.

Marking

Equipment supplied in the UK will have to carry a new UK CA Marking symbol. If a Technical File has been prepared for CE marking to the Machinery Directive 2006/42/EC, then there are relatively minor changes, or additions required to apply the UK CA Marking as well; these are indicated later. However, these will have to be addressed in the Technical File. It is expected that a single Technical File will be acceptable for both CE and UK CA marking, with minor changes identified for the UK CA Marking requirements.

The UK CA Marking must be at least 5mm in height, the same requirements apply for applying the marking to packaging under certain Directives. For Machinery, the marking must be applied on the machinery or manufacturers plate. The marking can be downloaded from [here](#), there is an outline version or a 'filled' version available.



If a Technical File does not exist, then it will have to be created in the same way that a Technical File is required for CE marking machinery. It may identify situations where CE marking is not being carried out at present on assemblies of machinery and ensure that marking is provided.

End users need to ensure their purchase requirements are updated to consider the new provisions.

It is expected that the Health and Safety Executive (HSE) will enforce the new Regulations.

Penalties

A person committing an offence under the Regulations may be liable to a penalty. Penalties can include a fine or a prison sentence of up to two years for the most serious offences. It is matter for the enforcement authority to decide what action is appropriate in each case taking into account the circumstances of the case and the enforcement authorities' own policies, operational procedures and practices in line with the Regulators Code. Should a prosecution take place, it is at the discretion of the court to decide the penalties imposed on the offender.

Essential Health and Safety Requirements

There are some minor proposed changes to the Essential Requirements:

1.5.1 The Electrical Equipment (Safety) Regulations 2016 apply instead of the Directive 2006/95/EC, which had been superseded by 2014/35/EU (Low Voltage Directive, or LVD). The UK Regulations were implemented to take account of the changes in LVD 2014/35/EU. It is expected that the Electrical Equipment (Safety) Regulations 2016 will be updated at some point as there are many references to EU Directives and requirements. It is not expected that there will be any physical changes required, other than marking and documentation.

1.5.7 Wording will change from EU Directives to enactments, these being the reference to explosion protection and the ATEX Directive, which is superseded by the SI; however, the requirements of requiring protection will not change.

1.7.1 The requirement is for warnings preferably to be understandable pictograms and any text to be in English. The Health and Safety (Safety Signs and Signals) Regulations 1996 are expected to apply, which also refer to EN ISO 7010. Non-EU suppliers should ensure that non-compliant signage is changed.

1.7.3 Where CE marking is mentioned it is replaced with UK CA Marking. It is assumed that most manufacturers will produce new plates to incorporate the UK Mark as well as the CE marking.

1.7.4.1 Requires the text of instructions to be in English.

Declarations

Changes to the Declarations are required, including changing the reference from 'EC Declaration' to 'Declaration'. The draft SI refers to the 'name and address of the person authorised to compile the relevant technical documentation' but does not state that this must be in the UK. (The EU requires a person who is established in the EU to compile the file). This point will need to be clarified.

It is likely that a single document can be prepared that addresses both EU and UK requirements for those who routinely sell to both. For UK only, the Declaration needs to be modified.

Technical Files

Technical Files have the same requirements for documentation as presently; however, they must be in English and the wording is changed to reference UK regulations rather than EU.

Annex VIII

Amendments to the requirements for ensuring conformity are assessed to the UK Regulations, rather than the Machinery Directive. This still retains the need for manufacturers to ensure that a conformity assessment is carried out and the machinery is compliant with the Regulations, and a Technical File can be made available to demonstrate this.

What this all means (in the author's opinion):

1. EN Standards will continue to be used to support machinery safety in the UK for the foreseeable future; however, they will be called 'designated standards'.
2. British Standards Institution (BSI) will continue to be involved in developing Standards in Europe and internationally.
3. The UK CA mark will have to be applied either instead of or alongside the CE Marking.
4. There is likely to be a transition period of eighteen months to allow the changes to be put into place.
5. The Essential Requirements that have changed from the Machinery Directive will need to be addressed to allow a Technical File to be created for UK CA Marking.
6. Declarations will require text changing for UK machinery.
7. If the manufacturer already manufactures CE Marked machinery and has Technical Files and Declarations, there is a small amount of work to update and modify existing documentation to cover the additional requirements for the UK. It does not seem to justify a whole new Technical File for UK machinery.
8. It would seem logical that Declarations could have both EU text and UK text to reduce the administrative burden on manufacturers.
9. Documentation must be able to be provided in English; this may create a burden on EU manufacturers who currently only provide Technical Files in an EU language.
10. The guidance specifies what happens if there is no deal, but it seems that the UK CA Marking will apply, even in the event of some sort of deal with the EU.

Website links (current at time of writing):

[Department for Business Energy and Industrial Strategy.](#)

[Draft Statutory Instrument](#)

[Existing Supply of Machinery \(Safety\) Regulations 2008 Statutory Instrument](#)

[Partnership pack: preparing for changes at the UK border after a 'no deal' EU Exit](#)

[Safe Machine Ltd](#)

This guidance is identified as withdrawn on Jan 30th 2020 - [UK CA Marking Guide](#)

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