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| **Procedures to be taken by UK Market Surveillance Authorities1 & Enforcement Authorities2 for Construction Products that present a Risk and the Necessary Actions by Economic Operators3** |

***This document provides general guidance on the procedures laid down in the CPR (No. 305/2011) and in RAMS, the Regulation for Accreditation4 and Market Surveillance5 (No. 765/2008) which is to be followed by the UK’s national market surveillance authorities. More explicit details of the market surveillance process and enforcement together with the penalties applicable to those contravening the CPR can be found in Statutory Instrument No. 1387 Building and Buildings, The Construction Products Regulations 2013 published by the UK Government***

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| **UK Devolved Countries** | **Designated Market Surveillance Authority1** |
| Great Britain (England, Scotland and Wales) | Trading Standards |
| Northern Ireland | Environmental Health Authority of a District Council |

**Definitions**

**1 - *Market Surveillance Authority* means an authority of a Member State responsible for carrying out market surveillance in its territory.**

**2 – *Enforcement Authority* is the Secretary of State or any local weights and measures authority in Great Britain, or any district council in N. Ireland**

**3 *- Economic Operator* means the manufacturer, importer, distributor or authorised representative.**

**4 - *Accreditation* means attestation by a national accreditation body that a conformity assessment body meets the requirements set by harmonised**

 **standards and, where applicable, any additional requirements including those set out in relevant sectoral schemes, to carry out a specific**

 **conformity assessment activity.**

**5 - *Market Surveillance* means the activity carried out and measures taken by public authorities to ensure that products comply with the requirements**

 **set out in the CPR and do not endanger health, safety or other aspects of public interest protection.**

Under the Construction Products Regulation (CPR), European Union Member States are required to undertake a process of market surveillance of construction products to ensure: -

* They do not compromise the health and safety of users
* That non-conforming products are withdrawn or their being made available on the market is prohibited or restricted
* The public, the Commission and other Member States are informed of any non-conformity issues
* That national infrastructures and programmes are in place to guarantee effective measures can be taken.

Outlined below are the actions to be taken by the market surveillance authority and the respective economic operator should an issue of non-compliance with the CPR be identified; the grounds for the serving of prohibition, warning or suspension notices; examples of scenarios where national authorities will take immediate protective action against products which are regarded as being serious risk and the legal penalties associated with breaches of the Regulation.

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| **Issue of** **Non-compliance** | **Market Surveillance Authority’s** **Initial Actions** | **Outcome of the Market Surveillance Evaluation** | **Subsequent Actions by the Enforcement Authority/Member State** | **Necessary Actions by the Relevant Economic Operator** |
| 1. Where a construction product, covered by a harmonised European Standard1 (hEN) or a European Technical Assessment2 (ETA) does not achieve the declared performance and presents a risk which will not enable the construction works to fulfil the building requirements for construction works3 (BRCW).
 | The authority will carry out an evaluation of the product to determine if the product does comply with the respective requirements of the CPR. | 1. **The product does not comply with the requirements of the CPR.**

  | 1. Will inform the relevant economic operator of the findings of the evaluation together with the legal remedies available within the UK and the time limits which apply to these remedies.

A person guilty of breaching the regulation or contravening any Notices issued by the Enforcement Authority is liable, on summary conviction, to imprisonment for up to 3 months and/or a fine not exceeding £5,000, depending on the offence.The Enforcement Authority may take any one of 3 course of action: -* Issue a ***Prohibition Notice*** prohibiting the person on whom the notice is served, form supplying any construction product described in the notice, including a requirement to withdraw or recall the product;
 | 1. Upon receipt of instructions from the Enforcement Authority to bring the product into compliance with its declared performance or to withdraw or recall it from the market, the economic operator shall be given an appropriate period of not less than 10 days to reply, unless there is an urgency to the measure being taken e.g. issues of health and safety or other grounds for public interest.
2. Further representation can be made to the person appointed by the authority to consider the matter before he makes his report on which the enforcement authority will base their final judgement.
3. Such representation can be made orally or in writing but Economic Operators need to be aware of the different time periods allocated to each method during the various stages of the process.
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| 1. (continued)

Where a construction product, covered by a harmonised European Standard1 (hEN) or a European Technical Assessment2 (ETA) does not achieve the declared performance and presents a risk which will not enable the construction works to fulfil the building requirements for construction works3 (BRCW). |  |  | * Issue a ***Warning Notice*** requiring, at the expense of the person on whom it is served, to publish a warning notice about products which have already been supplied or are currently being supplied;
* Issue a ***Suspension Notice*** prohibiting the person on whom it is served from supplying products for up to

6 months. 1. If action is taken without the economic operator being heard, they shall be given the opportunity to respond as soon as possible and the enforcement authority shall promptly review the action taken.
2. Inform the Notified Body4, if applicable.
 | 1. If the response to the Enforcement Authority is rejected, the economic operator must immediately take all appropriate corrective actions as directed by the enforcement authority to bring the product into compliance with the declared performance or recall or withdraw it from the market within a reasonable period of time.
2. To make the product available on the market again, the Enforcement Authority must be advised of what actions have been taken to put the product into compliance with the CPR and their approval for the product’s release is required.
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| 1. (continued)

Where a construction product, covered by a harmonised European Standard1 (hEN) or a European Technical Assessment2 (ETA) does not achieve the declared performance and presents a risk which will not enable the construction works to fulfil the building requirements for construction works3 (BRCW). |  |  | 1. If the authorities consider the non-compliance is not limited to their national territory, they will inform the Commission and other Member States of the results of the evaluation and the actions they have required the economic operator to take.
2. The Authority must indicate to the Commission whether the non-compliance is due to:-

(i) The failure of the product to achieve the declared performance and/or to meet the requirements enabling the works to meet the BRCW, or(ii) Any shortcomings in the hEN, ETA or Specific Technical Documentation5. *(If no objections are received within 15 days from the Commission or another Member State, the measures taken shall be deemed justified.)* |  |

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| 1. (continued)

Where a construction product, covered by a harmonised European Standard1 (hEN) or a European Technical Assessment2 (ETA) does not achieve the declared performance and presents a risk which will not enable the construction works to fulfil the building requirements for construction works3 (BRCW). |  |  | 1. Any measures taken shall be promptly withdrawn or amended upon the economic operator demonstrating that they have taken effective action as directed.
2. If the economic operator fails to take adequate corrective action, the Enforcement Authority shall take all appropriate measures to prohibit or restrict the product being made available in the market or to withdraw or recall it.
3. Inform without delay, the Commission and other member States of the measures taken.
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| 1. **If the product is compliant with the requirements of the CPR.**
 | Informs the economic operator of the results and that no action is being taken. | Continue to make the product available on the market. |

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| **Issue of** **Non-compliance** | **Market Surveillance Authority’s** **Initial Actions** | **Outcome of the Market Surveillance Evaluation** | **Subsequent Actions by the Enforcement Authority/Member State** | **Necessary Actions by the Relevant Economic Operator** |
| 1. Where, following an evaluation, the construction product is found to be in compliance with the CPR, **but it still presents a risk** to the fulfilment of the BRCW, to health and safety of persons or to other aspects of public interest. (We are unable to give an example of this.)
 | Shall require the economic operator to take all appropriate measures to ensure that before the product is placed back on the market, it no longer presents that risk or to withdraw the product from the market or recall it within a reasonable period commensurate with the nature of the risk. |  | Immediately inform the Commission and other Member States giving all available details. | Ensure the necessary corrective action is taken. |
| 1. Where the CE marking6 has been erroneously affixed to a product.
 | Shall inform the economic operator to put the product back in legal conformity with the CPR. |  | If the economic operator does not put the product back in compliance with the requirements of the CPR, the Market Surveillance / Enforcement Authority shall take measures to restrict or prohibit the product’s availability on the market or to ensure its recall or withdrawal is undertaken from the market. | Upon receipt of instructions from the Market Surveillance / Enforcement Authority, to immediately bring the product back to the legal requirements of the CPR or to recall or withdraw it from the market. |
| 1. Where the CE marking6 has not been affixed to a product for which a Declaration of Performance7 (DoP) has been issued.
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| 1. A DoP has not been drawn up.
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| 1. The technical documentation is either not available or is not complete.
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| **Notes: -**1 – A standard adopted by CEN on the basis of a request issued by the Commission, in accordance with Article 6 of Directive 98/34/EC2 – The documented assessment of the performance of a construction product in relation to its essential characteristics in accordance with the respective European Assessment Document.3 – Construction works as a whole and in their separate parts must be fit for their intended use, taking into account in particular the health and safety of persons involved throughout the  life cycle of the works. Subject to normal maintenance, construction works must satisfy the seven basic requirements (as listed in Annex I of the CPR No. 305/2011) for construction  works for an economically reasonable working life.4 – A body authorised by its national government to carry out third-party tasks in the process of assessment and verification of constancy of performance(AVCP) under the CPR.5 – Documentation demonstrating that methods within the applicable system for the assessment and verification of constancy of performance have been replaced by other methods provided  that the results obtained by these other methods are equivalent to the results obtained by the test methods of the corresponding harmonised European standard.6 – A marking by which the manufacturer indicates that the product is in conformity with the Declaration of Performance.7 – A document, drawn up by the manufacturer, giving information about a construction product’s performance in relation to its essential characteristics as given in the applicable harmonised  European standard.  |

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| **Grounds for the Serving of Prohibition Notices, Warning Notices or Suspension Notices****on Economic Operators** |

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| **Economic Operator** | **Grounds for serving of a notice** |
| **Manufacturers** | Failure to comply with the following duties: - 1. To keep technical documentation and declaration(s) of performance for 10 years after the product is placed on the market.
2. To provide information and documentation demonstrating conformity of the product with the declaration of performance and compliance with other applicable requirements of the CPR to the competent national authority and to co-operate with that authority on action to eliminate risks posed by the product.

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| **Manufacturers authorised representative** | Failure to comply with the following duties: -1. To keep technical documentation and declaration(s) of performance for 10 years after the product is placed on the market
2. To provide information and documentation demonstrating conformity of the product with the declaration of performance and compliance with other applicable requirements of the CPR to the competent national authority and to co-operate with that authority on action to eliminate risks posed by the product.
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| **Importers** | Failure to comply with the following duties: -1. To keep technical documentation and declaration of performance for 10 years after the product is placed on the market.
2. To provide information and documentation demonstrating conformity of the product with the declaration of performance and compliance with other applicable requirements of the CPR to the competent national authority and to co-operate with that authority on action to eliminate risks posed by the product that the importer has placed on the market.
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| **Distributors** | Failure to comply with the following duties: -1. To provide information and documentation demonstrating conformity of the product with the declaration of performance and compliance with other applicable requirements of the CPR to the competent national authority and to co-operate with that authority on action to eliminate risks posed by the product that the distributor has made available on the market.
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| **Economic Operator** | **Grounds for serving of a notice** |
| **Where importers and distributors are subject to the obligations of manufacturers i.e. where either places a construction product on the market under their own name or modifies a product already on the market such that its conformity with the declaration of performance may be affected.** | Failure to comply with the following duties: -1. To draw up and keep technical documentation and declaration of performance for 10 years after the product has been placed on the market.
2. To draw up a declaration of performance and affix the CE marking visibly, legibly and indelibly to the product or to a label attached to it. Where this has not been possible or was not warranted on account of the nature of the product, failure to affix it to the packaging or the accompanying documentation.
3. To ensure that procedures are in place so that products maintain their declared performance.
4. Carry out sample testing where deemed appropriate with regard to ensuring the accuracy, reliability and stability of the product’s declared performance.
5. To keep a register of complaints of non-conformity and the product recalls.
6. To ensure the product bears a type, batch, serial number or any other element allowing identification or where the size or nature of the product did not allow this, the required information should have been provided on the packaging or in a document accompanying the product.
7. To indicate on the product or where that was not possible, on its packaging or in a document accompanying the product, their name, registered trade name or registered trademark and contact address.
8. To ensure the product was accompanied by easily understood instructions and safety information in a language determined by the Member State in which it is being made available on the market.
9. To take the necessary corrective measures to bring a product into conformity with its declared performance or to withdraw or recall it if they had reason to believe that the product they had placed on the market was not in conformity with its declared performance.
10. Where a product presents a risk, to immediately inform the competent national authority of the Member State where the product has been placed on the market.
11. To comply with a reasoned request from a competent national authority to supply, in a language easily understood by the authority, all relevant information and documentation necessary to demonstrate the product’s conformity with its declaration of performance and compliance with other applicable requirements of the CPR.
12. To co-operate with a competent national authority on any action taken to eliminate the risked posed by a product which they have placed on the market.
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| **Scenarios where National Authorities will take Immediate Protective Action** **against Products which are a Serious Risk.**  |

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| **Situation** | **Measures to be taken by Member States/Market Surveillance Authorities**  |
| **Products presenting a serious risk** | 1. Member States must ensure that these situations require rapid intervention, including where the effects of this serious risk are not immediate.
2. Market surveillance authorities shall prohibit that product being placed on the market and shall require the customs authority to endorse the commercial invoice and other relevant accompanying documents or, where the data processing is electronic, with the phrase *“Dangerous product – release for free circulation not authorised – Regulation (EC) No. 765/2008”.*
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| **Products not complying with harmonised legislation** | 1. Market surveillance authorities shall take appropriate action which may necessitate prohibiting the product being placed on the market.
2. Market surveillance shall require the customs authority not to release the product for free circulation and to endorse the commercial invoice and other relevant accompanying documents or, where the data processing is electronic, with the phrase *“Product not in conformity – release for free circulation not authorised – Regulation (EC) No. 765/2008”.*
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| **Products presenting a risk** | 1. Market surveillance authorities shall immediately require the economic operator to take all appropriate corrective actions to bring the product into compliance with the CPR, notably the declaration of performance or for them to withdraw or recall the product from the market.
2. The Notified Body, if involved, will be advised accordingly.
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| **Where an economic operator fails to take adequate corrective action** | 1. The market surveillance authority shall take all appropriate provisional measures to prohibit or restrict the product's availability in the market, including its withdrawal or recall.
2. The European Commission and other member States are to be immediately informed of such actions.

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| **Products that present a risk to health and safety**  | 1. Where a Member State, having evaluated a product, finds that it is still in compliance with the Regulation but, nevertheless, it still presents a risk of the construction works not meeting its basic requirements regarding the health and safety of persons or to other aspects of public protection, shall require the relevant economic operator to take all appropriate measures to ensure the construction product no longer presents that risk, to withdraw or recall it from the market in a reasonable period of time.
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| **Situation** | **Measures to be taken by Member States/Market Surveillance Authorities**  |
| **Where a product must be withdrawn from the market** | 1. Where the action of one Member State requires a product to be withdrawn from the market is considered justified, all Member States shall take the same action within their own territories.
2. Where the action of one Member State requiring a product to be withdrawn from the market is considered to be unjustified, all Member States concerned shall withdraw the measure.

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| **Where an economic operator fails to put an end to the non-compliance of a construction product i.e. issues with the affixing of the CE marking or drawing up of the DoP or a lack of availability of the technical documentation** | 1. The Member State shall take appropriate measure to restrict, prohibit, withdraw or recall the product from the market.
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| **Other Breaches of the CPR and Penalties for these Offences** |

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| **Other Breaches of the CPR** | **Penalty if found guilty** |
| **Manufactures**1. Failure to draw up a Declaration of Performance when required.
2. Failure to affix a CE marking as indicated in the Regulation.
3. Failure to take necessary corrective measures and provide information to the competent authority.
4. Failure to provide product identification.
5. Failure to provide contact information.
6. Failure to provide instructions and safety information in the language of the Member State where the product is being made available on the market.
 | 1. Imprisoned for a term not exceeding 3 months or to a fine not exceeding £5000

or to both.1. Imprisonment for a term not exceeding 3 month or to a fine not exceeding £5000 or to both.
2. Imprisonment for a term not exceeding 3 month or to a fine not exceeding £5000 or to both.
3. A fine not exceeding £5000.
4. A fine not exceeding £5000.
5. A fine not exceeding £5000.
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| **Importers**1. Failure to take necessary corrective measures and provide information to the competent authority.
2. Failure to provide contact information.
3. Failure to provide instructions and safety information in the language of the Member State where the product is being made available on the market.
 | 1. Imprisonment for a term not exceeding 3 month or to a fine not exceeding £5000 or to both.
2. A fine not exceeding £5000.
3. A fine not exceeding £5000.
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| **Cases where Importers assume the obligations of manufacturers**1. Failure of the importer to apply to the product a type, batch, serial number or any other element allowing identification. Where the size or nature of the product. does not allow this, failure to apply the required information on the packaging or in a document accompanying the product.
2. Failure of the importer to provide its name, registered trade name or registered trademark and contact address on the construction product or, where this is not possible, on its packaging or in a document accompanying it.
3. Failure of the importer to ensure the construction product is accompanied by easily understood instructions and safety information in a language determined by the Member State where the product is being made available on the market.
 | 1. A fine not exceeding £5000.
2. A fine not exceeding £5000.
3. A fine not exceeding £5000.
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| **Other Breaches of the CPR** | **Penalty if found guilty** |
| **Distributor**1. Failure to take necessary corrective measures and provide information to the competent authority.
2. Failure to pass on instructions and/or safety information issued by the manufacturer

in the language of the Member State where the product is being made available on the market.1. Failure to provide the product identification as given by the manufacturer.
2. Failure to provide the contact information for the manufacturer and/or the importer.
 | 1. Imprisonment for a term not exceeding 3 month or to a fine not exceeding £5000 or to both.
2. A fine not exceeding £5000.
3. A fine not exceeding £5000.
4. A fine not exceeding £5000.
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| **Cases where Distributors assume the obligations of manufacturers**1. Failure of the distributor to apply to the product a type, batch, serial number or any other element allowing identification. Where the size or nature of the product does not allow this, failure to apply the required information on the packaging or in a document accompanying the product.
2. Failure of the distributor to provide their name, registered trade name or registered trademark and contact address on the construction product or, where this is not possible, on its packaging or in a document accompanying it.
3. Failure of the distributor to ensure the construction product is accompanied by easily understood instructions and safety information in a language determined by the Member State where the product is being made available on the market.
 | 1. A fine not exceeding £5000.
2. A fine not exceeding £5000.
3. A fine not exceeding £5000.
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