

# **Construction Products Association EU Regulations and Directives Guidance Document**

**Contents:**

The Process of EU Legislation Becoming UK Law	3
Types of EU Legislation	3
How does EU Legislation become UK Law?	3
The complication of devolved government	4
Process diagram	5
Definitions	6
Regulations and Directives Risk Analysis Table	7
Regulations and Directives affecting the UK	10
Regulations	10
1. Market Legality	10
2. Health and Safety	10
Directives	11
1. EU Climate change	11
2. Energy use in Buildings	14
3. Products and Energy	15
4. Health and Safety	16
5. Emissions	17
6. General Environment	17
7. Miscellaneous	19

## The Process of EU Legislation Becoming UK Law

The nature of EU legislation and its relationship with national legislation often causes confusion. Although distinct from UK legislation initiated by the UK government, EU laws become part of UK law by virtue of the *European Communities Act 1972*. It is also important to understand that EU law takes precedence over existing UK law which must be amended if it is found to conflict with the EU legislation.

This information sheet considers the main types of EU legislative instruments and their implementation into UK law.

### Types of EU Legislation

Two types of EU legislation identified in Article 288 of the *Treaty on the Functioning of the European Union 2007* (TFEU) which are of significance to the UK construction industry and its supply chain are:

1. Regulations
2. Directives

Article 249 of the *European Community Treaty* distinguishes between an EU *Regulation* and an EU *Directive* as follows:

**EU Regulation:** A *Regulation* is directly binding on the individual citizens of all EU Member States as of the date set down in the Official Journal of the EU (OJEU). It cannot be debated by a national government so it passes directly into national law.

**EU Directive:** A *Directive* lays down the end result to be achieved by EU legislation in the Member States to which it is directed, but leaves it up to national governments to decide how to adapt the EU law to achieve these goals. Each *Directive* specifies the date by which the national laws must be adapted. Thus, *Directives* have to be transposed by individual national governments to enable them to pass into national law.

### How does EU Legislation become UK Law?

The *European Communities Act (ECA) 1972* is a statute enacted as primary legislation by the Westminster Parliament. It allows EU specified instruments (*Regulations* and *Directives*) to become UK law without the need for separate enactment of each and every instrument.

Section 2(1) of the *ECA* gives statutory authority for EU *Regulations* to become law uniformly and automatically within the UK without further implementation by Parliament on the date set down in the OJEU.

EU *Directives* are addressed to Member States and are legally binding upon the State itself. Section (2) of the *ECA* provides the means for the State (UK government) to transpose EU *Directives* into UK law by enabling Parliament to establish either primary legislation (an *Act of Parliament*) or secondary legislation in the form a *Statutory Instrument* to accomplish this task.

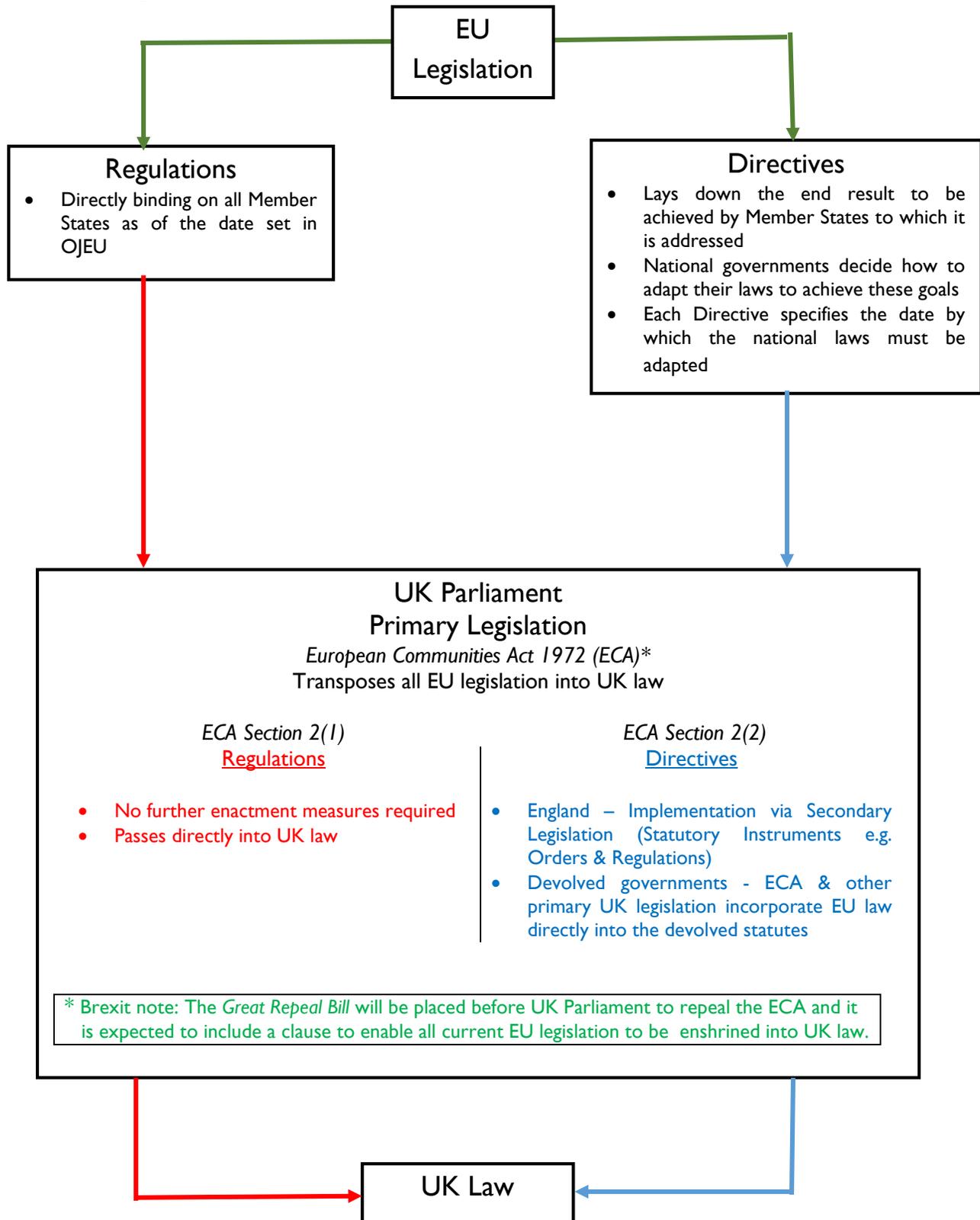
The vast majority of EU legislation is enacted by *Statutory Instruments*. These confers authority on ministers or government departments to subsequently bring into force or alter legislation without Parliament having to pass a new Act. They also confer powers on ministers to bring only sections of an Act into force or to vary penalties for offenses or to fill out detail in broad provisions of an Act.

There are two methods that can be used by the UK government when transposing EU *Directives* into domestic law. If this is carried out with no additions it is called 'copy-out'. Alternatively, the government can enhance the *Directive* by including additional requirements and this is known as 'elaboration'. This latter situation is often referred to as 'gold-plating' and is a perfectly legal process. 'Gold-plating' can lead to an increased burden being placed on industry or, in cases where existing higher UK standards are being retained, no extra burden is physically placed on industry.

### **The complication of devolved government**

The Westminster government has devolved powers to the individual countries making up the United Kingdom. Under the *ECA*, any EU law dealing with these devolved matters automatically becomes the responsibility of each devolved government to implement.

## Process Diagram



## **Definitions**

### **EU Directive**

*Article 249 of the EC Treaty* - A measure adopted by the European Parliament acting jointly with the Council and the Commission, which is binding as to the result to be achieved, upon each member state to which it is addressed, but shall leave to the national authorities the choice of form and method.

Interpretation: - Directives lay down the end results to be achieved in Member States, but leaves it up to national governments to decide how to adapt their laws to achieve these goals. Each Directive specifies the date by which the national laws must be adapted.

Sometimes the UK Government has 'gold plated' these Directives by adding to or enhancing the EU requirements.

### **EU Regulation**

*Article 249 of the EC Treaty (ex art 189)* – A measure adopted by the European Parliament acting jointly with the Council and the Commission, which shall have general application. It shall be binding in its entirety and directly applicable in all member states.

Interpretation: Regulations are directly binding on all Member States throughout the EU as of the date set down in the OJEU.

### **Act of Parliament**

A statute enacted as primary legislation by a national or sub-national (devolved) parliament.

### **Statutory Instrument**

Is a form of legislation which allows the provision of an Act of Parliament to be subsequently brought into force or altered without Parliament having to pass a new Act. Statutory Instruments may take the form of Orders or Regulations.

### **Orders and Regulations**

These are utilised by the UK government to introduce policy measures as a means for meeting the targets and requirements set out in both acts of parliament and EU directives. They set out legally binding requirements on companies and bodies operating within a particular sector.

### Regulations and Directives Risk Analysis Table

Regulation	Relevance Directly on Construction Products Association	Assuming changes impact on membership	Positive/negative	Notes
<b>Market Legality</b>				
Construction Products Regulation	5	5	<b>Negative</b>	Current system working for all industry so no need to make changes.
EU Timber Regulation	1	5	<b>negative</b>	Down to Timber Trade Federation and similar bodies. The UK Timber Procurement Policy existed before the EUTR so this legislation will be kept
<b>Health and Safety</b>				
Registration, Evaluation and Authorisation of Chemicals (REACH)	1	5	<b>negative</b>	Highly relevant for product trade bodies as does not impact all products can gain update from CIA
Directive	Relevance Directly on Construction Products Association	Assuming changes impact on membership	Positive/negative	Notes
<b>EU Climate Change Legislation to Reduce Greenhouse Gases</b>				
EU Climate Change Framework:	1	3	<b>neutral</b>	The UK is a signatory to the 1992 United Nations Framework Convention on Climate Change. The UK is a signatory to the related Kyoto Protocol which came into effect in 2005. This was implemented in the UK as the Climate Change Act 2008. The UK and the EU have yet to sign the Paris Agreement.
<ul style="list-style-type: none"> <li>• EU Emissions Trading System</li> </ul>	3	5	?	Impact on heavy side. Not for CPA lead however need to be kept in the loop.
<ul style="list-style-type: none"> <li>• EU Renewable Energy Directive 2009/28/EC</li> </ul>	3	4	<b>negative</b>	Retrograde step if there is a reversal of policy.
<ul style="list-style-type: none"> <li>• EU Carbon Capture and Storage Directive 2009/31/EC</li> </ul>	1	1	<b>Neutral</b>	Industry is keen for CCS, but government has been unwilling to invest in the required infrastructure

EU Energy Efficiency Directive	2	4	Negative	Would be a retrograde step
<b>Energy use in Buildings</b>				
Energy Performance of Buildings Directive	1	1	neutral	Before EPBD introduced, UK already had a zero carbon standard which was cancelled in mid-2015. Does this mean that the UK government will include nZEB into Building Regulations?
<b>Products and Energy</b>				
Ecodesign of Energy Related Products Directive	3	1	Neutral	May effect the odd construction product.
Efficiency requirements for new hot-water boilers fired with liquid or gaseous fuel Directive 92/42/EEC	1	1	neutral	
Energy Labelling Directive	1	1	neutral	
<b>Health and Safety</b>				
Carcinogens and Mutagens Directive	1	1	neutral	Health and safety issues so I do not expect the government to change this.
Basic Safety Standards Directive 2013	2	2	Negative	Health safety policy still to be transposed into UK Law but would have a positive impact protecting workers.
Construction Site Directive 92/57/EEC	1	2, but those who design installations, 3	neutral	
<b>Emissions</b>				
Industrial Emissions Directive	3	3	neutral	Health and safety issues so I do not expect the government to change this.
<b>General Environment</b>				
Water Framework Directive 2000/60/EC and 2013/39/EU	2	2	neutral	Unlikely that government would want to undo this work.
Waste Framework Directive 2008/98/EC	3	3	positive	Unlikely Government will change

Landfill Directive 1999/31/EC	1	2	positive	There is a shortage of landfill sites so I don't see this policy changing.
Packaging and Packaging Waste Directive	2	4		Individual material bodies to lead on.
EU Environmental Impact Assessment Directive	1	4		Not for CPA involvement
EU Environmental Liability Directive	1	1	neutral	
<b>Miscellaneous</b>				
EU Public Procurement Legislation 2014	3	4	Positive	If this helps to support local supply chains it would be positive.
VAT Directive 2006/112/EC	5	5	Positive	
State Aid	5	5	positive	

<b>Very low</b>	<b>low</b>	<b>Medium</b>	<b>High</b>	<b>Very high</b>
1	2	3	4	5

## EU Regulations and Directives Affecting the UK

### A. Regulations

#### I. Market Legality

##### a) Construction Products Regulation

- Enforcement regime implemented in the UK as The Construction Products Regulations 2013
- Will affect all manufacturers/distributors/importers
- Uniform testing procedures; CE marking; provision of information down the supply chain
- Still numerous delegated acts in the pipeline for individual construction products
- Emissions to indoor air, outdoor air, soil, water etc. still to be included
- Sets a level playing field across EU Member States for placing construction products on the Single Market

Issues:

- What do we replace this with?
- Exporters to EU will need CE marking for products to enter the Single Market
- Importers will have to use EN standard as this is what EU manufacturers use.
- Why change?
- ENs now BS's
- CPA has been heavily involved in all CPR matters

##### b) EU Timber Regulation

- EUTR now enshrined in UK law as the Timber and Timber Products (Placing on the Market) Regulations
- Only place legally sourced timber and their derived wood products on the EU market
- Applies to domestic and imported timber
- Onus on importer to carry out due diligence to determine legality of products
- Affects all areas of the timber using industry
- Cost implications, but good at reducing illegal logging and a reduction in forest cover
- The UK Timber Procurement Policy existed before the EUTR so likely this will be kept

Issue:

- Does anyone want to do away with legislation that aims to stamp out illegal logging when sustainability of resource and its supply is a key issue?
- CPA has not been involved with the EUTR

### 2. Health and Safety

#### Registration, Evaluation and Authorisation of Chemicals (REACH)

- The enforcement regime has been implemented in the UK by the REACH Enforcement Regulations 2008

- Addresses the production and use of chemical substances and their potential impacts on human health and the environment
- Affects most parts of industry worldwide
- Requires all companies manufacturing or importing chemical substances into the EU over 1 tonne p.a. to register these substances with the European Chemicals Agency
- Some chemical substances are contained within objects so any company importing goods could be affected
- Need to pass on relevant information to customers
- Ensures everyone aware of health and safety information
- Cost commitment to most of industry

Issue:

- Does anyone want to do away with a system aimed at protection of human health and the environment?
- Not really a CPA issue, rather Chemical Industry Association would be heavily involve

## **B. Directives**

### **I. EU Climate Change Legislation to Reduce Greenhouse Gases**

#### **a) EU Climate Change Framework**

The UK is signatory to the 1992 United Nations Framework Convention on Climate Change (UNFCCC) and sits as a member in its own right at the Conference of the Parties.

The UK is also a signatory to the Kyoto Protocol which was adopted in 1997 and came into force in 2005. KP is linked to the UNFCCC and commits its Parties (the developed nations) by setting internationally binding reduction targets.

The UK implemented the Kyoto Protocol by the UK Climate Change Act passed in 2008 and which established a framework to develop an economically credible emissions reduction path, including the target of 80% reduction by 2050, carbon budgets and an independent Committee on Climate Change.

The actions taken by the UK fulfil its requirements within a European Climate Framework, but they exist in their own right.

The Paris Climate Agreement (which is an implementation agreement under the UNFCCC) has now reached the necessary threshold of number of national signatories and percentage of global greenhouse gases emissions, and will come into force in early November 2016. The EU signed the Paris Agreement on 5 October and the UK has announced that it will sign the Agreement before the end of 2016.

- Objective to stabilise atmospheric greenhouse gas concentrations at a level that would prevent dangerous build up arising from human activities

In the EU context, its stated main vehicle for emissions reduction is the EU Emissions Trading System. UK energy intensive companies have to be part of the EUETS.

Additionally, other policies geared at climate change are:

- The Renewables Energy Directive (1c) and Carbon Capture & Storage (1d)

Targets include:

By 2020 – legally binding agreement for EU members

- 20% cut in GHG emissions from 1990 levels
- 20% energy from renewables
- 20% improvement in energy efficiency

By 2030 – legally binding agreement for EU members

- 40% cut in GHG emissions from 1990 levels
- 27% share for renewable energy
- 27% improvement in energy efficiency

UK remains a signatory to the United Nations Framework Convention on Climate Change (UNFCCC) – Kyoto Protocol and afterwards – implemented in UK as the Climate Change Act 2008

2050 – Non-binding ambition for EU members

- 80% cut in GHG emissions from 1990 levels
- Milestone = 60% cut by 2040

Since the UK Climate Change Act 2008 implements the Kyoto Agreement, then withdrawal from the EU would not affect current UK government policy.

In June 2016, just after the referendum, the government committed to the fifth carbon budget 2028-2032 under the UK Climate Change Act. This aims to reduce greenhouse gas emission by 2030 to 57% of the 1990 levels.

#### **b) EU Emissions Trading System – Directive 2003/87/EC**

- Implemented in the UK as the Greenhouse Gas Emissions Trading Scheme Regulations 2012
- Sets a cap on GHG emissions which is translated into tradeable emission allowances
- UK to reduce emissions below 1990 levels by 20% in 2020 & 80% by 2050
- Promotes corporate investment in low carbon technologies
- Applies to energy intensive industries only, so for construction this means cement, steel, ceramics and glass.

How successful the EU ETS has been at stimulating a sustained reduction in GHG emissions is the subject of much debate.

There are many views to the merits or not of participating in the EUETS and CPA will need to consult with its members that participate in the scheme as to their desire for some form of future engagement or not.

- CPA does not take the lead on EUETS as the relevant sectors have dedicated personnel working on these issues. Also industry liaises with government through an Emissions Trading Group, to which CPA belongs.

### c) EU Renewable Energy Directive 2009/28/EC

- Implemented in the UK as The United Kingdom National Renewable Energy Action Plan
- UK to report on how it plans to achieve its legally binding targets on use of renewables
- Growth in global energy demand coupled with depletion of domestic fossil fuel reserves puts security of energy supply at risk
- Measures (some only):
  - Renewables obligations (will probably close to new projects)
  - Feed in Tariffs
  - Renewable Heat Incentive
  - Reduced tax on fuels using cooking oil
  - Zero carbon homes & non-domestic buildings
  - Building Regulations
  - Code for Sustainable Homes (now withdrawn)
  - Wave & tidal research
  - Contracts for Difference
- Deliver 30% renewable energy use by 2020
- Recognises that new electricity generating capacity needed as old coal fired power stations and nuclear power plants reach their end of life
- Affects all companies

#### Issues:

- Renewables now account for 25% of UK power usage
- Security of new generation capacity required to replace the one-fifth of UK power capacity that will be decommissioned by 2020
- Thus, UK either increases renewables and/or nuclear

### d) EU Carbon Capture and Storage Directive 2009/31/EC

- Transposed in the UK as the Energy Act 2008 (updated 2013)
- Will affect all companies indirectly
- Policy driven by two long term energy challenges – tackling climate change by reducing CO<sub>2</sub> emissions & ensuring clean, secure & affordable energy
- Establishes a legal framework for delivering secure, affordable, low carbon energy by:
  - Decarbonisation of the national grid
  - Nuclear regulation – safety & security of next generation nuclear plants
  - Development of renewables
  - Consumer protection measures

Government was supportive of CCS up until late 2015 when it announced that no funds were now available to pursue CCS. This came as a huge surprise to the energy intensive industries that had been working with government on carbon reduction roadmaps. For some sectors they can only achieve carbon targets with decarbonisation of the grid and CCS infrastructure in place (especially storage facilitated by the North Sea oil/gas industry).

So government policy on CCS needs to be given urgent priority for investors to remain interested. A transport and storage infrastructure policy is key to any future development of CCS on power generation and industry in the UK. Having this infrastructure in place and maximising the use of the UK's existing North Sea assets is essential. Thus, government must now decide on a new strategy for CCS and a new gas industry.

- Little involvement if any by CPA
- Little direct effect on industry

#### e) EU Energy Efficiency Directive 2012/27/EU

- Affects buildings
- Transposed as the UK National Energy Efficiency Action Plan 2014
- Also covered by:
  - ECO  
Government working on a new ECO policy for 2018-22 for retrofitting domestic dwellings with energy efficient measures so it unlikely that this policy will change.
  - The Energy Savings Opportunities Scheme (ESOS)
  - Building Renovation Strategy (BRS)
  - National Energy Efficiency Action Plans (NEEAP)
- Requires:
  - Make energy efficient renovations to at least 3% of central government buildings
  - National governments to only purchase highly energy efficient buildings
  - Member states to draw up long term national building renovation strategies
  - Large undertaking to mandatory carry our energy audits & identify energy saving schemes. No legal requirement to install any saving schemes
  - Plus more

ESOS currently under review as part of the Business Energy Tax Review. It has to be questioned whether this policy has driven significant carbon reduction to achieve our carbon budgets. As this policy has no binding requirements to follow up on a company's energy review, it would seem pointless to maintain this requirement. However, the government could change this policy.

NEEAP requires the government to report on the carbon saving been made and the estimated future savings towards the 2020 EU Climate Change Framework. Next review due in 2017, but our withdrawal from the EU may lead the UK to decide not to meet the 2020 EU targets.

BRS first renovation policy in 2014 was not well publicised and has not been widely used to inform investment decisions as it fails to provide a long-term outlook for delivery targets. The April 2017 review could not be undertaken if eventually we do not comply with the Energy Efficient Directive and the government changes the UK Energy Action Plan. But why would it do this?

## 2. Energy use in Buildings (Other Directives)

### Energy Performance of Buildings Directive

- Affects buildings not products but how the building is put together will affect its performance
- Construction product manufacturers therefore involved by providing energy performance data
- Transposed as:

- The UK as the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007
- The Energy Performance of Buildings (Certificate and Inspections) (Amendment) Regulations (Northern Ireland) 2014
- The Energy Performance of Buildings (Scotland) Regulations 2008
- Implemented by major changes to the Building Regulations 2006
- Requires:
  - Homes & commercial properties to have an Energy Performance Certificate (EPC) when constructed, sold or let
  - Large public authority buildings (over 500m<sup>2</sup>) frequented by the public must display the energy certificate (DEC in England & Wales)
  - Air conditioning systems over 12kW to be regularly inspected by an energy assessor & given an Air-conditioning Inspection Report (ACIR)
  - For EPC, DEC & ACIR to be valid they must be lodged by an accredited energy assessor with the EPB Register
- Criticism:
  - RICS criticises on grounds of poor quality
  - None invasive inspection – so quality poor
  - Does not directly affect manufacturers or the distribution chain

With the EPBD now enshrined in UK law and EPCs being an integral part of energy efficiency framework policy, it would seem unlikely that these certificates would be scrapped. DEC's could be removed because in 2015 the Government consulted on options for significantly watering down or completely removing them as they were 'gold plating' of EU rules. While no changes have so far been implemented, this move could indicate a UK decision to remove DEC's.

- Part 2 – nZEB performance (nearly Zero Energy Buildings):
  - All new buildings must be nZEB by 31 Dec 2020 (public buildings by 31 Dec 2018)
  - Set minimum energy requirements for all new buildings, major renovation works, & replacement & retrofit of building elements
  - Member States to make list of national financial measures to improve energy efficiency of buildings

Before the EPBD was introduced, the UK already had in place a zero carbon standard for domestic dwelling by 2016 and for non-domestic building by 2019. This was cancelled in mid-2015 leaving the construction industry in the UK wondering whether the nZEB performance would be the next target for inclusion in Building Regulations?

In the light of the cancellation of the zero carbon policy, the government could decide not to upgrade building regulations to a Zero Energy Buildings level.

EPBD 2010/31/EU currently under evaluation as legally required by 1 January 2017.

### 3. Products and Energy

#### a) Ecodesign of Energy Related Products Directive 2009/125/EC

- A framework directive encompassing a list of product specific directives on energy efficiency of products

- Will only affect a few companies e.g. glass/glazing/windows as not directly aimed at construction products, however, it needs careful monitoring as issues of overlapping between eco-design & CPR keep cropping up. This may lead to products having to be tested to two different regimes for the same characteristic.
- Transposed as Energy Related Products Regulations 2010, SI 2010 No. 2617 as amended by SI 2015 No.469
- Reduction in greenhouse gas emissions by reducing energy use of domestic products emphasising product design at the development stage
- Implemented through product specific regulations e.g.
  - Household white goods
  - Water pumps
  - Some are construction products e.g. glass???

Individual construction products may be involves as new specific product are nominated. Therefore a necessity to keep monitoring the situation.

**b) Efficiency requirements for new hot-water boilers fired with liquid or gaseous fuel Directive 92/42/EEC**

- Only some manufacturers affected
- Implemented in the UK by The Efficiency Requirements for the New Hot-water Boilers Fired with liquid or Gaseous Fuels (Implementation Measures) Regulations SI 427.17
- Promoting energy efficiency of boilers (4kW – 400kW)
- One of the measures implemented by the Ecodesign of Energy Related Products (see 3a above)

**c) Energy Labelling Directive 2010/30/EU**

- Aimed at consumer products
- Transposed as the Energy Information Regulations 2011 SI 2011 No. 1524 as amended by SI 2011 No. 2677
- Provision of product labels giving energy consumption & performance for specified domestic appliances
- Strongly allied to the Eco-design Directive.

**4. Health and Safety**

**a) Carcinogens and Mutagens Directive 2004/75/EU**

- Implemented in the UK as the Control of Substances Hazardous to Health Regulations 2002 (COSHH) and COSHH (NI)
- Protection of workers health and safety at work (Occupational Exposure Limit Values)

I do not see the government changing any health and safety legislation.

**b) Basic Safety Standards Directive 2013  
(Still to be transposed into UK law)**

- Will affect companies where ionising radiation is used
- Implemented by a series of provisions, supported by codes of practice, non-statutory guidance and administrative arrangements
- Euro Atom Directive – Protection of workers against ionising radiation
- UK has until 2018 to transpose into UK legislation

**c) Construction Site Directive 92/57/EEC**

- Transposed into UK law as the Construction(Design and Management) Regulations 2007 (updated in 2015)
- Affects manufacturers who design installations using their own products

**5. Emissions**

**Industrial Emissions Directive 2010/75/EU**

- Transposed as:
  - The Environmental Permitting (England and Wales) Regulations 2010 – replaced in 2015 by SI 2015/324
  - Pollution Prevention and Control (Scotland) Regulations 2012
  - Pollution Prevention and Control (Northern Ireland) Regulations 2012
- Regulate emissions from large industries
- Regulation of pollutant emissions from industrial installations in air, waste water & the generation of waste, noise & energy efficiency – administered by Environment Agency & Local Authorities
- All waste to be pre-treated before disposal to landfill (physical, chemical, thermal or biological process)
- Must result in reducing its volume, hazardous nature, facilitate easier handling or enhance its recovery
- Will affect all industrial processes

Again health and safety issues so I do not expect the government to change this.

**6. General Environment**

**a) Water Framework Directive 2000/60/EC and 2013/39/EU**

- Transposed as:
  - The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 – amended to SI 1623 in 2015
  - The Water Environment and Water Services (Scotland) Act 2003
  - The Water Environment (Water Framework Directive) Regulations (Northern Ireland) 2003
- Provision of good quality and quantitative water (including marine)
- Much of work undertaken by the devolved Environmental Agencies & water companies

- Affects companies on the quality of water they discharge from their manufacturing processes to comply with new ecological standards for rivers, lakes, estuaries and coastal waters.

Unlikely that government would want to undo this work.

#### **b) Waste Framework Directive 2008/98/EC**

- Transposed into UK law as:
  - The Waste (England and Wales)(Amendment) Regulations 2012 (& 2014)
- Collection, transport, recovery and disposal of waste in a safe manner so as not to endanger human health or causing environmental harm
- Separate collection of paper, metal, glass & plastic
- Overlaps with the Packaging and Packaging Waste Directive (13)
- Introduces a waste hierarchy – prevention, re-use, recycling, recovery & disposal
- Affects businesses waste disposal – separate material disposal where possible
- Probably form part of the Circular Economy thinking

I do not see government doing away with the legislation.

#### **c) Landfill Directive 1999/31/EC**

- Affects production of waste and disposal charges
- Implemented in England through the Waste Strategy 2007 and across the UK as the Waste and Emissions Trading Act 2003
- Emphasis on prevention/reduction of the negative effects of landfilling
- Recycling/reuse consideration by manufacturers
- There is a shortage of landfill sites so I don't see this policy changing.

#### **d) Packaging Waste Directive 94/62/EC**

- Will affect most manufactures
- Transposed in the UK as The Packaging (Essential Requirements) Regulations 2015
- Overlaps with the Waste Framework Directive (10)
- Obligation on manufacturers to meet set targets on recovery and recycling of packaging materials including heavy metal content
- Requires:
  - Packaging must fulfil the essential requirements and is within the heavy metal concentration limits
  - Essential requirements are:
    - Minimum amount of packaging used to maintain safety and hygiene
    - Must be re-useable
    - Noxious or hazardous substances in packaging must be minimised in emissions, ash or leachate from incineration to landfill
- Essential packaging designed for all recovery routes – helps with collection & sorting of waste (?)
- An element of Circular Economy thinking

**e) EU Environmental Impact Assessment Directive 85/337/EEC amended 2015**

- Will affect manufacturers building or expanding manufacturing plants. Housing will not have a direct effect on the manufacturer
- Transposed into English law under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011
- Transposed into Welsh law under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999
- Transposed into Scottish law under the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011
- Transposed into Northern Ireland law under the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999
- Requires authorities to:
  - Undertake an environmental impact assessment and development of an Environmental statement for any project that is likely to have significant effects on the environment by virtue of its size, nature or location
  - Covers industrial and housing projects
- Applies to most forms of development

**f) EU Environmental Liability Directive 2004/35/EC**

- Will only affect manufacturers when expanding or building new plant or if an accidental discharge to the environment
- Deals with the prevention and remedy of environmental damage under the polluter pays principle
- Transposed into English and Welsh law as The Environmental Damage Regulations, Preventing and Remedying Environmental Damage (England and Wales) – SI 2015 No. 810
- Transposed into Scottish law as The Environmental Liability (Scotland) Regulations 2009
- Transposed into Northern Ireland law as The Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009
- Covers:
  - To remedy the damage or remove the threat of such damage rather than penalise those responsible for it
  - Damage is to protected species, natural habitats, water or significant risk to adverse effects of human health from contamination by substances, preparations, organisms or micro-organisms
  - Object is to achieve remediation to the same level of natural resource or services as would have existed before the environmental damage occurred.

**7. Miscellaneous**

**a) EU Public Procurement Legislation 2014**

- Comprises:
  - (i) Public Contracts Directive 2014/24/EU – applies acquiring supplies, services or works
  - (ii) Directive 2014/25/EU for entities operating in the water, energy, transport sectors
  - (iii) Directive 2014/23/EU for concession contracts

- Only (i) has been transposed into English, Welsh and N. Ireland law as SI 2015/102 The Public Contracts Regulations
- Implemented through the Public Contracts (Scotland) Regulations 2012 and Utilities Contracts (Scotland) Regulations 2012
- Sets the procedures and practices which central & local government and other public bodies must adhere to when procuring above a relevant threshold (works, services or supplies)
- Excludes secret contracts (in national interest), real estate, research & development

Public Contracts Directive 2014/24/EU – applies acquiring supplies, services or works

Requirements & key changes:

- Focus on 'value for money' (vfm) – best mix of quality & effectiveness for the least outlay over the period of use of the goods & services bought
- Competitive tender process
- Electronic documentation must be available for use
- Simplifies the procurement process so SMEs can also benefit
- Reduced documentation and red tape
- Process more SME friendly e.g. encouraging procurement to be split into lots so SME's can bid
- Make it clear that previous poor performance by a bidder will lead to their exclusion
- Easier process to take social & environmental aspects into account
- Create a new 'light touch' regime for social, health & some other types of services that is less stringent than for other types of procurement
- Abolition of pre-qualification stage for procurements below the threshold
- Have regard to guidance on qualitative selection issued by Cabinet Office for above EU threshold procurement
- Contracting authorities to insert provision for prompt payment
- Government PQQ to be replaced by European Single Procurement Document – a bidders passport to being shortlisted for public contracts in the EU

Impact:

- UK Regulations go further than the Directive
- Gives Cabinet office scope to introduce 'Guidance' (new rules) for UK public procurement:
  - Payment of invoices within 30 days
  - Abolition of pre-qualification questionnaires below EU threshold
  - All advertised tenders also to be advertised with 24 hours in Contracts Finder
- SME friendly rules enable procurement organisations to develop local supply chains – could give combined authorities an economic boost
- Crown Commercial Service to take on all procurement and contracting responsibility for central government departments
- Centralised, joint & collaborative procurement organisations will flourish at the expense of more localised procurement

As UK regulations go further than the EU Directive, UK legislation unlikely to be changed

## **b) VAT Directive 2006/112/EC**

- Made effective for UK legislation through the European Communities Act 1972

In 2014 the European Court of Justice ruled that the UK must use a 20% VAT rate for all energy saving measures. The UK has challenged this ruling by maintaining the lower rate for insulation measures and scrapping it for renewables. The EU renewables industry has protested this UK move so the government is reviewing the situation. The European Commission has also indicated that it will review the VAT. Our withdrawal from the EU could mean the UK no longer has to comply with this Directive.

## **c) State Aid**

If the UK remained part of the EEA, as it would if it joined EFTA, then EU state aid rules would continue to apply to energy infrastructure and support schemes since the EEA Agreement contains a similar prohibition. Depending on the Brexit model we settle on, any subsidy granted by the UK government would not fall foul of the EU state aid rules. However, any such subsidy will need to comply with the WTO rules which are similar in their intention to EU rules. It is expected that the UK will remain bound by WTO subsidy rules.

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