**Outstanding area of concern not resolved by the UK-EU Trade and Cooperation Agreement**

**Updated 5th July 2021**

**1. UK testing centres cannot certify products for the EU market**

* The EU has stated that, for conformity assessment directly in accordance with EU legislation, it will not accept test reports (existing or new) issued by UK testing bodies, however, they contradict this by also stating that acceptance of test reports etc. is a decision to be made by individual organisations.
* Under the Northern Ireland Protocol UK Approved Bodies can act as UK Notified Bodies enabling CE marking for products destined for Northern Ireland which lies within the EU area for conformity assessment. However, these same test reports from the same bodies are not recognised in the rest of the EU - strange anomaly.
* New products developed by UK companies will have to use an EU Notified Body to enable affixing of the CE marking for placing products on the EU market. This means a duplication of testing and conformity assessment for the UK and the EU markets.

**2. Problem with AVCP System 3**

* Under AVCP System 3, a manufacture must have an Initial Type Test (ITT) report issued by a Notified Test Laboratory.
* All other activity is undertaken by the manufacturer.
* The test report is a snapshot in time so it can be argued that historic data from any laboratory was at the time of testing Notified, should continue to be accepted regardless of any subsequent change in the laboratories status.
* UK Test reports are no longer recognised by the EU thus unilaterally invalidating all existing AVCP System 3 testing carried out in the UK and those for the future.
* So tests must be repeated at an EU-27 Notified Body.
* We definitely know that UKAS and MHCLG are developing a workable approach for the UK market.

Thus, any product under AVCP System 3 still has to undergo re-testing to enable the CE marking to be affixed.

* It has been reported that UKAS is permitting UK Approved Bodies to undertake testing on behalf of a EU Notified Body sharing the results to allow both organisations to issue two test reports for AVCP 3 type testing.
* Unfortunately the reverse cannot occur due to restrictions issued by the European Commission.

**3. UK test houses do not have the ability to undertake specific tests. These can only be undertaken by an EU laboratory.**

* UK manufacturers are compelled to switch to an UK Approved Body that has a functioning partner in the EU so that UKCA markings can be affixed for the UK market.
* Some tests cannot be undertaken cannot be undertaken by any UK Approved Body even those with a functioning partnership within the EU.
* Due to the retirement of trained personnel in a UK testing body and no replacement staff being qualified to undertake the work means that there are no UK approved testing laboratories to undertake the work so no UKCA marking can be undertaken.

**4. Lack of capacity of UK Testing House for some products**

Several manufacturers from different industry sectors cannot obtain testing time due to:

* There being insufficient Approved Bodies capable for testing some products in the UK as they are fully booked testing EU manufacturer’s products.
* The length of time individual tests take for a single product can be extensive e.g. a minimum of 28 days curing time is required for an individual sealant or adhesive and may be longer for some conditions.
* Duration of a series of tests for a single product can be prolonged (some products take up to 3 months or more) so to fit in testing of numerous products before 1st January 2022 is not physically possible.
* The fire safety industry has the same issue with insufficient testing capacity to enable manufacturers to transition to the UKCA marking due to complex, unique and lengthy process of testing when compared to other construction products. It is an unrealistic time frame for UK businesses to achieve UKCA marking by 1st January 2022. This will directly impact the fire safety of 1000,s of buildings because the majority of systems are only compatible with certain products. If the fire safety businesses are unable to transition to the UKCA mark on these particular products it will mean one of two things:
  + End users will have to entirely replace their existing system as it is non-compliant. This could cost thousands of pounds (never mind the inconvenience)
  + End users will have a fire safety system that is unsupported, unserviceable and unprotected.
* There is insufficient time to increase the existing test capacity as the proper training of personnel to be able to obtain reliable, consistent test results to the current standards (EU and UK) requires a minimum of 12 months.
* In addition, a commitment to invest in the initial work to develop the testing skills of personnel will pass the date of 1st January 2022.
* Some product groups are imported from around the world, in addition to the heavy imports originating from the EU, so testing capacity is being severely curtailed for UK manufacturers due to demand.
* Testing capacity for fire doors is insufficient to provide the fast turn round required in satisfying contracts.
  + It can take 15 months from initial enquiry to receiving back a finished test report
  + It takes 4-6 weeks to receive back recognition of a request for a test date before this can be fixed.
* It is common practice for the cement industry to undertake short term measures by importing small quantities of cement and fly ash to plug gaps in the UK’s supply chain. Currently, the testing, statistical analysis and CE marking is completed at the European works by an EU Notified Body. The imported material is then tested on arrival in the UK for colour and strength to confirm that the cement is as dispatched. This takes 28 days. For UKCA marking the full Initial Type Testing has to be undertaken followed by ongoing testing and statistical analysis which usually takes 6-8 weeks for most cements and longer for fly ash due to the requirement for the 90 day activity index. This is because the UKCA system regards these materials as being completely new products. The problem has arisen because the testing and analysis undertaken by the EU Notified Body will no longer be recognised in the UK from 1st January 2022. Such a tome period for each set of tests means that the UK will no longer be able to spot purchase quantities of cement and fly ash to accommodate periods of sudden high demand in the UK.
* Lack of any testing houses for specific products.
* The knock on effect of this is that even repairs will have to be undertaken using UKCA marked products. This will not only affect the construction sector but also other industry sectors e.g. cars, planes trains e6tc.

**5. Mismatch between U Government Legislation and list of UK Designated Standards**

* Some existing UK legislation references European standards which have not been cited in the OJEU. This means that the UK list of Designated standards, while agreeing with the EU’s list of harmonised standards, does not match the standard being referenced in UK legislation. Thus manufacturers cannot apply the UKCA marking.

**6. UKAS**

* Despite UKAS’ continued membership of European Accreditation (EA), the International Accreditation Forum (IAF) and International Laboratory Accreditation Cooperation (ILAC), the EU no longer recognises the UK’s National Accreditation Body with regard to Accreditation directly related to European legislation.

While European Accreditation states “As signatory to the EA Multilateral Agreement (MLA) the accreditation system operated by UKAS continues to be accepted by the other signatories as equivalent to their own accreditation system and declare, when requested, conformity assessment results (e.g. reports and certificates) issued by conformity assessment bodies accredited by UKAS for the relevant scope to the EA MLA, to the ILAC Multilateral Recognition Arrangement and to the IAF Multilateral Recognition Arrangement as reliable as those issued by conformity assessment bodies accredited by themselves.”

* + This contrasts to the EU’s statement that “UKAS certificates will no longer be considered as proof of accreditation within the meaning of Regulation (EC) No. 765/2008 and certificates and reports issued by conformity assessment bodies accredited by UKAS are no longer recognised with respect to the EU Regulatory system as of 1st January 2021 e.g. regarding Notified Bodies for the purpose of CE marking, EU

Emission Trading System, EU Food and Feed regulations, EU Cybersecurity act and other EU legislation.”

* UK Government have stated that CPR System 3 test reports from EU Notified Bodies cannot be accepted as stand-alone reports for UKCA marking. However, it may be possible for a UKCA Approved Body to include a validated EU test report as part of the evidence under a 1+, System 1 or System 2+ approach. In this case the Approved Body would need to validate and take ownership of the report as part of its processes. UK Government are currently considering a final approach to this issue.
* This issue will be compounded from 1st January 2022 when the UK ceases to recognise CE marking in Great Britain and EU products will have to switch to applying the UKCA

marking. At this stage it is not clear whether EU test reports can be used to support UKCA marking.

* MHCLG is investigating this situation to determine whether this is a legal position or a policy choice.

**7. Unlevel playing field**

* For the GB market in 2021 we are accepting both UKCA and CE marking while on the EU market (with the exception of the market in Northern Ireland) manufacturers who have a UK Notified Body test report do not conform and cannot apply CE marking. Thus they have to either retest with an EU Notified Body or transfer the test report to an EU Notified Body (rebadging) which is by no means certain to be accepted.
  + The EU has stated that this is an issue they do not want to deal with and that it is up to local enforcement. Also, conformity assessment bodies have said it is nothing to do with them. In particular, in AVCP System 3, a Notified Body is only involved in the determination of the product type with the manufacturer carrying out the factory production control - see item 2.
  + What happens where no UK test body can undertake some of the tests and those tests will have to be carried out by an EU notified Body which has a relationship with a UK Approved Body? - see item 3.

**8. Overseas exporters abandoning the UK market**

* Many items of plant and equipment for inclusion in building projects are imported and Safety Assessment Federation Ltd is reporting that many overseas exporters are not seeking to adopt UKCA marking from 1st January 2022 when CE marking ceases to be recognized in Great Britain.
* Projects which have not yet procured items of plant are at serious risk of delay as are projects in the early planning phase due to the potential lack of availability of both plant and equipment and/or capacity for conformity assessment bodies to provide their services in support of UKCA marking.
* The refurbishment and overhaul sector is similarly at risk
* Engineering inspection and conformity assessment covers all industrial sectors. Examples of products covered by UKCA marking and ongoing examination to ensure availability for continued safe use include:
  + Simple pressure vessels
  + Lifts
  + Pressure equipment
  + Machinery
  + Low voltage electrical equipment
* These product areas will include the following items (this is not an exhaustive list):
  + Boilers
  + Chillers
  + Cranes
  + Passenger and goods lifts
* If overseas exporters do not UKCA mark their products form 1st January 2022 then shortages of plant and equipment used in buildings will quickly become apparent.
* A school of thought advises that those companies who have already achieved UKCA marking will hold the market to ransom.

**9. Formation of the UK Group Technical Assessment Bodies (Replacement for EOTA)**

* This is now in train, however, numerous questions are arising which require answering.
* The Group of UK TABs are in discussions with EOTA over a future relationship. The initial ‘observer’ status offer would allow some limited engagement with EOTA activities but would not permit involvement in drafting EADs.
* MHCLG has put in a formal request for EOTA to share EADs with both UK TABs and MHCLG. The intention is to publish or ‘designate’ existing EADs so that UK TABs can issue UK Assessment Documents but there is no formal path yet in place for this to happen.
* Since making this request, EOTA have now agreed for permission to be granted for the use of EADs that had been published before the UK left the EU. This now requires a cross licencing agreement to be drawn up between EOTA and the specific UK TABs who will make use of these documents.
* Although progress has been made on this issue what this means in practice and how it will function still needs to be established.
* How these EADs could be used for the GB market will need to be ironed out in the UK TABs Working Group and with MHCLG. While UK regulations allow for UK Assessment Documents to be used in support of a fresh UK Technical Assessment to be issued but the purpose and benefit of going down this route which exists in the EU no longer exists in GB now that we have left the EU.
* Also, this leaves the issue of using future EOTA EADs still unresolved.
* There appears to be little appetite amongst UK TABs for a direct equivalent to EOTA being established in the UK.

**10. Formation of the Group of UK Approved Bodies**

* The formation of the UK Group of Approved Bodies (UKGAB) is well underway with MHCLG having produced a document that will allow the UKGAB to start work on the required position paper etc.

Kevin Frewin (BSI) who is the former joint Chair of the UK Group of Notified Bodies will, ASAP, call a meeting of the UKGAB so that a new Chair can be elected and the organisation can move forward. Once a mandate has been received from MHCLG this will overcome any issues with the Competition Act and the potential for a manufacturer to challenge the UKGAB’s legitimacy.

A meeting is being arranged for Tuesday, 4th May.

**11. UK REACH**

* The text of the UK-EU Trade and Cooperation Agreement (UK\_EU TCA) does not address data concerns which could lead to possible divergence.
  + In the draft chemical annex in Mat 2020 it was proposed that parties would agree to share data, risk assessments, scientific information, priority substance information and assessment methodologies where appropriate. The final text mentions neither the European Chemicals Agency (ECHA) nor data sharing. Instead it states that parties “commit to facilitate the exchange of non-confidential information between responsible authorities, including through cooperation on electronic formats and tools used to store data”. Thus access to EU held data sets may be impossible or prohibitively expensive to achieve.
* EU REACH applies in Northern Ireland so the so-called UK REACH should more accurately be referred to as GB REACH
* Extended registration deadlines set by government are still too short:
  + 1st March 2021 - Deadline for GB-based holders and downstream users of existing EU-REACH authorisations to provide information to HS&E on their authorisations
  + 30th April 2021 - Date by which companies must complete initial GB REACH grandfathering of EU held registrations
  + 27th October 2021 - Deadline by which companies can submit downstream user import notifications
* The cost to industry of establishing a parallel system to that of the EU-REACH model is prohibitively high with registration fees not proportionate to the size of the national market.
* How will the regulator approach compliance checks and controls?
* Lack of official guidance on the new rules and regulations.
* A sizable number of industry bodies have written to the government proposing a break from the EU approach of registering data for every substance and suggesting instead a lighter touch approach where only chemicals of greater concern would need full registration.
* This would have EU officials complaining there is no longer a level playing field under the UK-EU Trade and Cooperation Agreement. Also this move would require primary legislation within Parliament.
* The Environmental Bill would also be problematic as it promises to retain the fundamental principles of REACH including mandatory registration of all substances while allowing flexibility on how this can be achieved.
* Downstream users of chemicals that do not hold an EU registration and became importers must submit a new registration to the UK Health and Safety Executive within set timeframes. This will prove arduous to those that have not undertaken this before.

**12. Mutual Recognition**

* Of product testing carried out by EU Notified Bodies & UK Approved Bodies.
* UK/EU agreement on mutual recognition would overcome most of these issue immediately for the UK and from 1st January 2022 for the EU.
* If mutual recognition is not agreed then EU manufacturers will be forced to use UK Approved Bodies to enable them to comply with mandatory UKCA marking as from 1st January 2022.
* The UK does not have the test capacity to meet this demand so disruption to EU exports to the UK will ensue.
* EU recognition of existing European Technical Assessments issued by UK bodies and new UK Technical Assessment Certificates is required now.
* A Tier 1 construction firm has postulated that if mutual recognition does not occur then the UK needs to continue to recognise CE marking to prevent many of the existing and future problem areas. This decision needs to be made extremely quickly to avoid issues.

**12. Future potential areas of concern**

* Divergence of standards.
* Status on use of sub-contractors.
* UKAS limitation on acting as an accreditation body recognized by the EU for activities directly related to EU legislation.
* Review of the CPR - any changes to legislation.

**Annex 1**

**Industry Example of Actual Issues**

**Problems with AVCP System 3**

Example from the rooflight industry

Rooflight manufacturers are unable to transfer their existing test reports under AVCP System 3 because no EU Notified Body will accept them. Also, although BSI now has a ‘sister’ organisation within the EU which potentially can re-issue certificates, this route is only open to products manufactured under AVCP Systems 1+, 1 and 2+. BSI have advised the reason for this is that the testing facilities must be within the country where you seek accreditation. BSI does not have any testing facilities in the Netherlands and therefore cannot gain system 3 notification.

Example from the Cement Admixture industry

* EU bodies are refusing to accept UK test data for microfibres for concrete produced under EN 14889-2 and for non-structural macro-fibres for concrete under EN 14889-2.
* UK test bodies are similarly refusing to accept EU test data for the same products.
* Result is that all AVCP System 3 fibre products are having to be re-tested at great expense to duplicate the existing test data.
* BSI is sub-contracting the testing to an EU test house to enable UKCA marking as there is no fibre testing available in the UK.

**UK test houses do not have the ability to undertake specific tests. These can only be undertaken by an EU laboratory**

Example from the Sealant industry

* Testing resistance to microbiological growth on sanitary sealants under EN 15651-3 can no longer be undertaken in the UK as the testing body which carried out the work no longer has the trained personnel available due to retirement.
* Another body is looking into taking on this accreditation work but have indicated this could take up to one year to fulfill UKAS approval.
* No other UK testing facility is currently available so UKCA marking cannot take place.

Example form the glass industry

From 1st January 2022if there is no UK Approved Body able to undertake some of the testing this leaves only EU test houses able to undertake the work. How will this work from 1st January 2022 when only UK Approved Bodies have to be used to enable manufacturers to affix the UKCA marking when the updated Memorandum of Understanding between the Government and UKAS states that the Secretary of State ill only recognize accreditation of conformity assessment bodies by UKAS?

The glass products affected include coated glass (e.g. low emissivity, solar control etc.), laminated glass for security applications and mirrors.

There are no UK Approved Bodies for the following tests:

Glass in buildings:

EN 410 Light & solar properties of glass

EN 12898 Determination of emissivity for coated glass

EN 1096-2 Durability of coated glass - Class A, B & S

EN 1096-3 Durability of coated glass - Class C & D

EN 356 Resistance against manual attack - for glass of P2a & higher

EN 1063 Resistance against bullet attack

EN 1036 Durability of silvered glass for mirrors

Example from the plastic piping and fittings industry

No UK testing houses have been accredited by UKAS to undertake testing to BS EN ISO 13263 - Thermoplastic piping systems for non-pressure underground drainage and sewerage. Thermoplastic fittings. Test method for impact strength. Only EU testing houses can undertake this test.

**Lack of Capacity of UK Testing Houses for some products**

Example from the radiator industry

* Radiators are unable to be tested to comply with UKCA marking. These also fall under AVCP System 3.
* Only one test house can test radiators and this has a maximum capacity of around 250 radiators a year. Currently there are over 5000 radiators that will need re-testing in order to comply with the UKCA requirements.
* For trench heating there are **no UK based test houses** so as it stands this product will not be able to be sold in the UK from 1st January 2022.

Example from the Building Services industry

* These products cover life safety and energy using systems in buildings. For key fire safety products to meet new UKCA marking arrangements it is not clear how much retesting will be needed nor whether there is sufficient capacity to complete tests before 1st January 2022. Time is rapidly running out to enable all required retesting to be undertaken.

Example from the timber industry

* The UK imports from all round the world (including very significant volumes from the EU) the vast majority of its sawn lumber (both softwoods and hardwoods), all its plywood and great quantities of other types of wood-based panels. Arrangements have to be put in place for UKCA marking to be affixed to these products necessitating action by UK Approved Bodies. It is not clear whether UK Approved Bodies will have to retest these products or whether they are prepared to take on the legal arrangements without physically undertaking retesting. There is insufficient time left before 1st January 2022 to accommodate retesting. The UK timber industry

is calling for the date of 1st January to be pushed back to enable this realignment with regulation to take place.

Example form the electric cable industry

* Manufacturers of electric cables used in buildings are concerned about the limited capacity amongst UK Approved Bodies to undertake certain testing and certification services to enable UKCA marking to occur by 1st January 2022.

Example from the road traffic sign industry

* There is a significant shortage of testing capacity in the UK for fixed vertical road traffic signs to enable UKCA marking to occur.

Example from the sealants industry

* With only one accredited testing body in the UK there is insufficient testing capacity and due to the long curing time (a minimum of 28 days for most tests) a set of tests for one product requires up to 3 months so meeting a 1st January 2022 deadline is impossible for major manufacturers with multiple products to re-test.
* The current single Approved test body is not able to accept testing for new products because of the testing backlog.
* There is insufficient time to increase the existing test capacity as the proper training of personnel to be able to obtain reliable, consistent test results to the current European (EU & UK) expected standards requires a minimum of 12 months (and a commitment to invest in the initial work to develop the testing skills).

Example from the adhesive industry

* There are only three Approved bodies for testing tile adhesives
* Testing time is prolonged for most adhesives e.g. 28 days curing time followed by up to a further 25 days before results are available - a total of 53 days for a single adhesive.
* Multiply this by the number of adhesives on the market, obtain the relevant documentation and affix the UKCAS marking by 1st January 2022 is not possible.

Example from the Cement Admixture industry

* There are no UK Approved Bodies for testing silica fume for use in concrete to BS Designated Standards EN 13623-1:2005+A1:2009.
* All testing houses are based in the EU.
* Thus UKCA marking cannot be affixed to this product.
* BSI advise that they will only take up this opportunity if there is a sufficient demand for UKCA marking.

Example from the glass industry

* There are only two UK testing bodies for glazed units that can test to EN 1279 - Thermal and durability properties for double glazed units so capacity is extremely tight
* Ability to affix UKCA marking is highly likely to hit a log jam
* With government policy covering long term energy targets, sustainability policy and increases in house building numbers these two bodies will not be able to meet demand.

Example from the Fire Industry Association

* There is insufficient time before 1st January 2022 to test the thousands of life safety products for the fire safety industry due to the extensive and expensive re-certification process under AVCP System 1 which involves:
  + Assessing the products performance based on the initial type testing executed by an independent third party test laboratory with which the UK Approved body has a specific agreement
  + Undertake the initial inspection of the manufacturing plant and the manufacturer’s Factory Production Control (FPC)
  + Carry out the annual surveillance audit of the FPC at the manufacturer’s plant.
  + It is estimated that this swill cost the industry a minimum of £20 million.
* A recent Brexit report found that with only 6 months left, 60% of respondents from the FIAs 1000 members, claim that only 20% of their products currently have the UKCA mark. Also, that only 6% of respondents have transitioned between 81-100% of their products to the UKCA mark.
* FIA is asking government to extend the deadline for mandatory UKCA marking to 31st December 2023.

**Unlevel Playing Field**

Example from the adhesives and sealants industry

* If UK distributors sell products under their own brand name they are classed as being a manufacturer. If part of their stock is supplied by a UK producer then the product must have a UKCA marking by 1st January 2022. If, however, part of their stock originates from an EU supplier and is CE marked, these stocks can continue to be sold without the UKCA mark until such time a new inventory is purchased. This is not a level playing field.

**Formation of the UK Group of Technical Assessment Bodies (Replacement for EOTA)**

Example from architectural iron mongers - hinges

* Multi-axis concealed hinges for fire and escape route doors are tested against a European Assessment Document. As there is currently no UK Assessment Document to replace the EAD, these multi-axis hinges cannot be UKCA marked. This will lead to a difficult and

dangerous situation for architects, specifiers and manufacturers of door systems in Great Britain.

Example from the road traffic sign industry

* Reflective sheeting - these all have ETAs through EOTA enabling CE marking of products/. The removal of the UK’s recognition of CE marking from 1st January 2022 with no UK equivalent system yet in place indicates that no UKCA marking can be affixed until this situation is resolved.

**Mismatch between UK Government Legislation and list of UK Designated Standards**

Example from the road traffic sign industry

* Variable Message Signs (VMS) can be CE marked to the current harmonised standard dated 2005, but under UK legislation - Traffic Sign Regulation and General Direction 2016 - this calls up EN 12966:2014. This standard has not yet been cited in the OJEU and so the list of UK Designated Standards only references the 2005 edition. This means that no VMS signs can be UKCA marked to the 2016 edition to meet the requirements of other UK legislation. CEN has suggested that citation could be in two years time.

**Annex 2**

**Estimated costs to UK industry**

**Sealant manufacturers**

* For a single large supplier of silicone/silane modified sealant only, the cost of re-testing and relabeling their products is between £200,000 - £500,000.

**Fire Safety Products**

* The estimated cost for the fire safety industry to transition to UKCA marking for its life safety products would be a minimum of £20 million.
* One manufacturer of fire detection and alarm systems has four products to transition to the UKCA marking at a best cost of £19,000, with a worst cost of £25,000.
* Another company has to carry the cost of £131,552 to transfer CPR certificates
* A third company has to carry a cost of £43,109.00 to switch to a UK Approved Body.