EXPLANATORY MEMORANDUM TO

THE CONFORMITY ASSESSMENT (MUTUAL RECOGNITION AGREEMENTS) (CONSTRUCTION PRODUCTS) (AMENDMENT) REGULATIONS 2021

2021 No.

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to amend the Conformity Assessment (Mutual Recognition Agreements) and Weights and Measures (Intoxicating Liquor) (Amendment) Regulations 2021 (S.I. 2021/730) ("the 2021 Regulations") to include in Schedule 1 to those Regulations, Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (EUR 2011/305) ("the Construction Products Regulations"), bringing it within the definition of "specified Regulations".

2.2 The effect of this is that regulation 4 of the 2021 Regulations will apply to a conformity assessment result issued by a Canadian conformity assessment body which carries out an assessment of construction products against the requirements of the Construction Products Regulations. It will mean that regulation 5 of the 2021 Regulations will apply to enable the Secretary of State to i) assign an identification number and include in any register, a Canadian conformity assessment body carrying out an assessment in relation to the Construction Products Regulations and ii) include a Canadian accreditation body (a body established in Canada which accredits conformity assessment bodies as competent to carry out assessments in relation to the Construction Products Regulations) in a register of those bodies.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.

4.2 The territorial application of this instrument is England and Wales, Scotland and Northern Ireland.

5. European Convention on Human Rights

5.1 The Minister of State for Housing, Mr Christopher Pincher MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Conformity Assessment (Mutual Recognition Agreements) (Construction Products) (Amendment) Regulations 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 The 2021 Regulations give effect to mutual recognition agreements ("MRAs") between the UK and certain countries to ensure that specific products assessed by bodies in these countries recognised under the MRAs can be placed on the market in Great Britain and enables the Secretary of State to designate and monitor UK conformity assessment bodies to assess products against the other parties' requirements. MRAs were agreed to help facilitate businesses from outside the UK to continue to be able to access the market in Great Britain with minimum disruption following the UKs exit from the EU.

6.2 The Agreement on Trade Continuity between the United Kingdom of Great Britain and Northern Ireland and Canada ("the UK-Canada Trade Continuity Agreement") entered into force on 1 April 2021. It incorporates provisions from the Comprehensive and Economic Trade Agreement ("CETA"), the trade deal between the EU and Canada, including the Protocol to that agreement. Under the Protocol to the UK-Canada Trade Continuity Agreement, ("the Protocol") the UK is required to recognise or accept a conformity assessment procedure or a conformity assessment result issued by a mutual recognition agreement body (i.e. a conformity assessment body designated by the Canadian authority responsible for designating such bodies under the Protocol in respect of the Construction Products Regulations).

6.3 None of the other MRAs specified in the 2021 Regulations contains provisions relating to the mutual acceptance of the results of conformity assessment of construction products. The amendment to the 2021 Regulations made by these Regulations is required in relation to the Protocol. The effect of this amendment is that a conformity assessment of construction products carried out by a Canadian conformity assessment body against a UK designated standard should be treated as if it were carried out by a UK approved body, meaning that, if a positive assessment is given, these products can be placed on the market in Great Britain with the UK Conformity Assessed (UKCA) mark. The UKCA mark is a mark of conformity used to signify that a product has met relevant mandatory or voluntary requirements set by the UK Construction Products Regulations. Additionally it enables the Secretary of State to assign an identification number for and compile and maintain a register of Canadian conformity assessment bodies and to maintain a register of Canadian accreditation bodies.

6.4 Specifically, the insertion of the Construction Products Regulations into Schedule 1 to the 2021 Regulations means that:

- a Canadian conformity assessment body designated by the Canadian authorities in respect of the Construction Products Regulations will be an "MRA body" for the purposes of the 2021 Regulations;
- the provisions of regulation 4 of the 2021 Regulations will apply meaning that a conformity assessment carried out by a Canadian conformity assessment body which has been designated by the Canadian authorities in respect of the Construction Products Regulations (which now comes within the definition of "MRA body") is to be treated as if it had been carried out by a UK approved

body. A positive assessment by that body will therefore allow constructions products is to be placed on the market in Great Britain;

- the provisions of regulation 5 of the 2021 Regulations will apply enabling the Secretary of State to assign an identification number to a Canadian conformity assessment body which has been designated in respect of the Construction Products Regulations and to compile and maintain a register of Canadian accreditation bodies which are recognised by the UK as competent to accredit Canadian conformity assessment bodies in relation to the Construction Products Regulations.

6.5 Regulations 6 (designation of UK bodies) and 7 (disclosure of information pursuant to an MRA) of the 2021 Regulations do not need to be amended in relation to the Protocol and construction products. Regulation 6 enables the Secretary of State to designate for the purposes of MRAs, a conformity assessment body in the UK to carry out assessments in respect of Canadian requirements for the purposes of the products that fall under the annexes and appendices to the MRAs that are listed in Schedule 2 to the 2021 Regulations. Annex 1 to the Protocol is listed in Schedule 2 to the 2021 Regulations and this Annex includes construction products.

6.6 Regulation 7 enables the Secretary of State (or a person authorised to act on behalf of the Secretary of State) to disclose relevant information to the third country if required by the MRA. Under the 2021 Regulations, "relevant information" is that which the UK is required to disclose under the MRA and this includes information that the UK is required to disclose under the Protocol.

6.7 Only the Protocol contains provision relating to the mutual acceptance of the results of conformity assessment of construction products so the amendments made by this instrument will have no effect in relation to the other MRAs specified in the 2021 Regulations.

7. Policy background

What is being done and why?

7.1 Before some products are placed on the market, a conformity assessment must be carried out by a conformity assessment body, which must be designated by the relevant national authority. MRAs allow countries to agree to recognise the conformity assessment results of the other country's conformity assessment body against the first country's requirements. Conformity assessment plays a critical part in ensuring products placed on the market comply with our UK Construction Products Regulations. It is the process of determining whether a product meets certain requirements to enable it to be legally placed on the market.

7.2 This instrument makes amendments to the 2021 Regulations to ensure the provisions of the 2021 Regulations apply in respect of the Protocol and construction products. The purpose of the amendment is to ensure that the UK recognises and accepts conformity assessment procedures and results issued by Canadian conformity assessment bodies, with regards to construction products placed on the market in Great Britain.

Explanations

What did any law do before the changes to be made by this instrument?

7.3 Following the departure of the UK from the EU, the UK and Canada negotiated the UK-Canada Trade Continuity Agreement. This incorporated CETA and the Protocol to it, under which the UK is required, among other things, to recognise or accept a conformity assessment procedure or a conformity assessment result issued by a mutual recognition agreement body.

Why is it being changed?

7.4 Under the Protocol, the UK is required to recognise or accept a conformity assessment procedure or a conformity assessment result issued by a Canadian conformity assessment body.

7.5 These provisions have effect through the 2021 Regulations for the "specified Regulations" i.e. the regulations listed in Schedule 1. The specified Regulations do not currently include the Construction Products Regulations. In order to fulfil the provisions described and required by the Protocol we need to amend the 2021 Regulations to give effect in relation to products covered by the Construction Products Regulations.

What will it now do?

7.6 This instrument makes the Construction Products Regulations a "specified Regulation" for the purpose of the 2021 Regulations. The effect of this is that the UK will recognise or accept a conformity assessment procedure or a conformity assessment result for construction products issued by a Canadian conformity assessment body that is recognised by the UK under the Protocol.

7.7 Additionally, it enables the Secretary of State to assign an identification number for and compile and maintain a register of Canadian conformity assessment bodies for the activities for which they have been recognised and to compile and maintain a register of Canadian accreditation bodies recognised by the UK as competent to accredit Canadian conformity assessment bodies in relation to the Construction Product Regulations. This register will ensure that market surveillance authorities and economic operators can see which recognised conformity assessment bodies can be used to place products on the market in Great Britain.

7.8 The amendment to the 2021 Regulations relates to the placing of construction products on the market in GB. For such products placed on the market in Northern Ireland, third country conformity assessment bodies will be recognised under EU trade agreements, including CETA, in accordance with the NI Protocol.

7.9 This instrument is being brought into force on the day after the day on which it is made because it provides for a continuation of arrangements which exist between the EU and Canada which applied to the UK when the UK was a member of the EU. As the instrument does not impose new requirements or duties on individuals, it is reasonable for it to come into force the day after it is made.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because

the agreement within scope of the instrument has been agreed as a result of the UK's exit from the European Union.

9. Consolidation

9.1 There are no current plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

10.1 A public consultation was not considered necessary because the instrument makes minor technical amendments to an existing SI to implement the already-agreed UK-Canada Trade Continuity Agreement. No impact upon stakeholders is envisaged. The devolved administrations have been consulted and are content with the approach taken.

11. Guidance

11.1 The department will update existing GOV.UK guidance (https://www.gov.uk/guidance/construction-products-regulation-from-1-january-2021) to reflect the provisions for the construction sector once the SI is made.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private, voluntary or public sector is foreseen. The main direct cost to businesses will be the familiarisation cost associated with these Regulations, and assessed costs have been deemed to be below the de minimis threshold.

13. Regulating small business

13.1 The legislation indirectly applies activities that are undertaken by small businesses. The amendments introduced by this instrument seek only to enable trade continuity, allowing manufacturers to undertake conformity assessment procedures prior to export, as agreed via the UK-Canada Trade Continuity Agreement. As such it is not necessary to take any steps to minimise impacts. We will communicate the effects of this instrument through our GOV.UK guidance so that businesses are aware.

14. Monitoring & review

14.1 The Department does not intend to monitor this instrument.

14.2 The Regulations do not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Minister for Housing, Christopher Pincher, has made the following statement:

"The Department has not included a statutory review clause. This is because a review would be disproportionate when taking into account the economic impact of this instrument. The instrument also implements the United Kingdom's international obligations, and the instrument will need to remain in place for so long as these signed agreements are in force."

15. Contact

15.1 Lindsey Lewis at the Ministry of Housing, Communities and Local Government Telephone: 07458009164 or email: lindsey.lewis@communities.gov.uk can be contacted with any queries regarding the instrument.

15.2 Damien Dacey, Deputy Director for the Building Safety Programme, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

15.3 Mr Christopher Pincher MP at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.