



Circular Letter BC09-2020

Date 08 December 2020

**RE: BREXIT AND NEW ARRANGEMENTS FOR THE MARKET SURVEILLANCE OF
CONSTRUCTION PRODUCTS**

To: The Chief Executive of each Local Authority
Director of Services for Building Control in each Local Authority
National Building Control Office
Authorised Officers

Colleagues,

1) READINESS FOR THE END OF THE BREXIT TRANSITION PERIOD

The United Kingdom (UK) left the European Union (EU) on 1 February 2020 after both sides had concluded a Withdrawal Agreement¹, which facilitates an orderly departure at 11 pm on 31 December 2020.

On 9 September 2020, the Government published an updated [Brexit Readiness Action Plan](#). This Action Plan supports and promotes the necessary preparations for the end of the Brexit transition period on 31 December 2020.

[Regulation \(EU\) No 305/2011](#) (known as the Construction Products Regulation or “the CPR”) sets the rules for the marketing of construction products in the EU. The CPR has direct legal application across the entire European Union since entering into force on 1 July 2013.

¹ The Withdrawal Agreement also includes the Protocol on Ireland and Northern Ireland, which protects the peace process and avoids a hard border on the island of Ireland, while preserving the integrity of the EU Customs Union and Single Market and Ireland’s place therein.



The European Union (Construction Products) Regulations 2013 ([S.I. No. 225 of 2013](#)), give full effect in Ireland to the market surveillance provisions of the CPR Regulation and designates building control authorities² as the market surveillance authorities for construction products.

After the end of the Brexit transition period, it is likely that there will be significantly concentrated activity at ports and airports. It will be necessary to have authorised officers available at a national level to liaise with customs personnel at ports and airports and to carry out enforcement duties in a timely manner.

In addition, EU legislation³, coming into force next year will be more demanding in terms of Member State's market surveillance activity and will develop an EU wide framework for market surveillance.

For market surveillance to be efficient, resources need to be concentrated where risks are likely to be higher or non-compliance more frequent, or where a particular interest can be identified.

In this regard, it is essential to have an active market surveillance authority, with the ability to respond at a local, national and international level to allegations of non-compliance in the Irish marketplace.

Dublin City Council (DCC-NBCO), in consultation with the Department and the County and City Management Association (CCMA), has agreed to take on a national role in market surveillance of construction products, by forming a new pillar (Pillar 5), of the National Building Control Management Project within the National Building Control Office.

² The 31 Local Authorities have appointed approximately 70 authorised officers.

³ [Regulation \(EU\) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations \(EC\) No 765/2008 and \(EU\) No 305/2011](#)



In this regard, 'Part 22 of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Bill 2020' provides the Minister for Housing, Local Government and Heritage with the powers to appoint a competent authority as a market surveillance authority for construction products, for the State as a whole. Subject to these powers, the Minister for Housing, Local Government and Heritage intends to appoint DCC-NBCO as a competent authority, thus establishing it as a national market surveillance authority.

2) STRUCTURE OF DCC-NBCO NATIONAL MARKET SURVEILLANCE UNIT

The DCC-NBCO national market surveillance unit envisages the involvement of a broader stakeholder group of Government Departments/Agencies/industry to work in partnership to ensure market surveillance of construction products is delivered in an effective and efficient manner on a nationwide basis.

The DCC-NBCO national market surveillance unit will be resourced with a team of authorised officers dedicated to carrying out active market surveillance on a nationwide basis.

Building control authorities will continue to be designated as the market surveillance authorities for construction products and are therefore required to continue their market surveillance activities. It is envisaged that there will be a need for liaison between the market surveillance authorities and DCC-NBCO national market surveillance unit to support compliance with the CPR (See Part 4 of this Circular Letter), and to determine appropriate action on enforcement matters, as they arise.

The Department is committed to supporting the operation of the DCC-NBCO national market surveillance unit for the initial period and have secured funding for 2020 and 2021 in this respect. After the initial phase, it is intended that the funding for the new market surveillance authority will transition back to a local authority funded function.



Appendix 1 to this Circular Letter outlines the new organisational structure and the roles and responsibilities of DCC-NBCO as the market surveillance authority responsible for the market surveillance of construction products, for the State as a whole.

3) IMPACTS FOR THE MARKETING OF CONSTRUCTION PRODUCTS AT THE END OF THE BREXIT TRANSITION PERIOD

While future relationship negotiations are ongoing, a number of outcomes are also already clear, the most significant of which is that, after the end of the Brexit Transition Period (11pm on 31 December 2020), the UK will be outside the EU's Single Market and Customs Union.

The consequential impacts of Brexit in relation to the marketing of construction products are summarised below:

- I. Manufacturers, importers, distributors and authorised representatives must continue to comply with the Construction Products Regulation, when placing construction products on the Irish/EU market.
- II. An economic operator established in the EU who, prior to the end of the transition period, was considered as an EU distributor of products received from Great Britain (England, Scotland and Wales), will become an importer for the purposes of EU product legislation in relation to such products as of the end of the Brexit transition period. This economic operator will have to comply with the more stringent obligations applicable to an importer.
- III. UK 'notified bodies' will lose their status as EU 'notified bodies', that is, they will be unable to perform conformity assessment tasks for the purposes of the CPR.
- IV. Manufacturers, importers, distributors and authorised representatives need to take the necessary steps to ensure that they hold certificates under the responsibility of an EU-27 'notified body' (that is, a 'notified body' registered in one of the 27 EU



countries after the UK leaves the EU). For construction products currently reliant on certification by a UK 'notified body', the manufacturers, importers, distributors or authorised representatives need to either:

- arrange for a transfer of their files and the corresponding certificates from the UK 'notified body' (a 'notified body' registered in the UK) to an EU-27 'notified body', or
- apply for a new certificate with an EU-27 'notified body'.

Either step must be taken before the end of the Brexit Transition Period 31 December 2020. The European Commission's [NANDO-CPR](#) database provides a list of designated EU Notified Bodies, as well as a list of Irish-based Notified Bodies.

4) ACTIONS FOR EACH LOCAL AUTHORITY IN ADVANCE OF 31 DECEMBER 2020

Each Building Control Authority will retain the powers as a market surveillance authority and will continue to play a key role in communicating relevant information on the Construction Products Regulation at local level. Increasing awareness and visibility of the market surveillance authority will ultimately lead to greater compliance among the relevant economic operators. In this regard, the Department requests that each building control authority take the following key actions: -

- Ensure that adequate resources are made available for market surveillance activities by means of appointment of authorised officers under Regulation 11 of the *European Union (Construction Products) Regulations 2013*,
- Advise the DCC-NBCO National Market Surveillance Unit (by email to support@nbco.gov.ie) of the name/contact details for each authorised officer appointed under Regulation 11 of the *European Union (Construction Products) Regulations 2013*, (in particular where there is divergence from the list of authorised officers published by the Department at:



<https://www.housing.gov.ie/housing/building-standards/construction-products-regulation/2016-02-02-contact-details-local>.)

- Incorporate material on the Construction Products Regulation on your organisation's website, including contact details for authorised officers appointed under Regulation 11 of the *European Union (Construction Products) Regulations 2013* and contact details for DCC-NBCO National Market Surveillance Unit (support@nbco.gov.ie).
- Host a link on your organisation's website to the Department's webpage on Brexit <https://www.housing.gov.ie/corporate/brexit/brexit>.
- Include a copy of '*Construction Industry – Preparing for the end of the Brexit Transition Period Frequently Asked Questions*', (available at: https://www.housing.gov.ie/sites/default/files/publications/files/faqs_construction_industry_preparing_for_the_end_of_the_brexit_transition_period.pdf), with each planning approval acknowledged. This will help to continue to raise awareness among specifiers, designers and builders of the need to look for the CE Marking on construction products and the accompanying Declarations of Performance.
- Review information available, locally which may be used to identify economic operators within your functional area that are likely to be affected by the Construction Products Regulation and implications of Brexit.



5) ENQUIRIES

Further enquires about this circular should be addressed to Ms. Margaret Power, Assistant Principal (Tel: 01 888 2363) or to Ms. Vicky McCabe, Higher Executive Officer (Tel: 01 888 2389), or alternatively by e-mail to buildingstandards@housing.gov.ie

Yours sincerely,

Sarah Neary

Principal Adviser

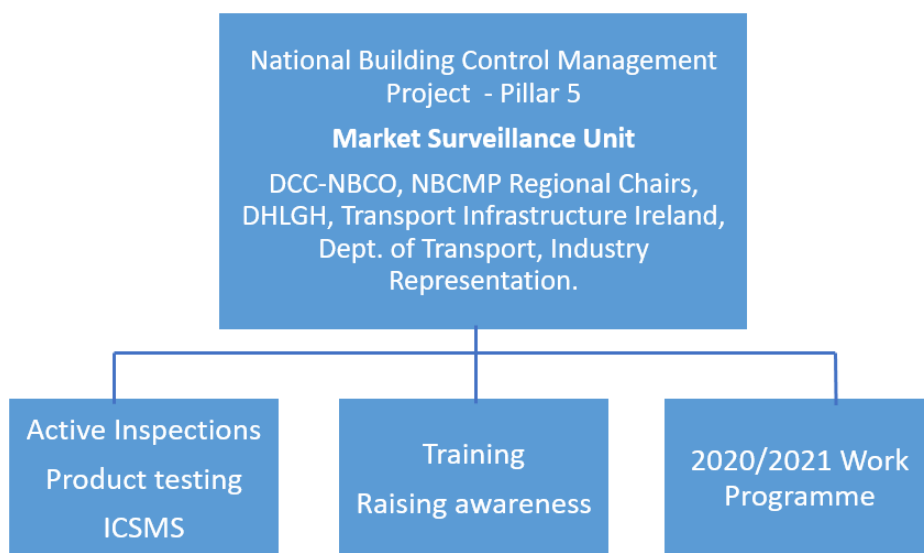
Built Environment Advisory



APPENDIX 1
ROLES AND RESPONSIBILITIES OF DCC-NBCO - NATIONAL MARKET
SURVEILLANCE UNIT

Dublin City Council - National Building Control Office (DCC-NBCO) will be required to:

- 1) With reference to the organisational structure below, put in place operational procedures for the effective running of Pillar 5 of the National Building Control Management Project;



- 2) Develop and implement efficient and effective business processes and procedures for market surveillance activities undertaken including planning, desk-based research, fieldwork and reporting;



- 3) Implement the following work programme:
- i. Operationalise the Market Surveillance Strengthening project⁴ which will include a market surveillance program on construction products generated from quarries and pits, with a particular focus on:
 - a) Aggregates for concrete (EN 12620);
 - b) Bituminous Mixtures (EN13043);
 - c) Unbound and hydraulically bound materials (EN 13242).
 - ii. Conduct active market surveillance of construction products.
 - iii. Prepare and plan for post Brexit market surveillance, including co-operation with the Revenue Commissioners.
 - iv. Carry out training of authorised officers with respect to relevant Market Surveillance Authority Guidelines, Information and Communication System on Market Surveillance (ICSMS), regional upskilling of authorised officers in Local Authorities.
 - v. Raise overall awareness of Construction Products Regulation with industry stakeholders, notably with respect to changes due to Brexit.
- 4) Investigate cases and following up, as appropriate, with economic operators to ensure that any legislative non-compliances are identified and non-compliant economic operators⁵ are appropriately dealt with (up to and including enforcement action);
- 5) Respond in a timely and appropriate manner to notifications received from the Revenue regarding consignments of construction products passing through Customs;
- 6) Liaise with the Department of Housing, Local Government and Heritage, EU Market Surveillance Authorities, Customs Authorities and other national authorities as

⁴ In conjunction with stakeholders i.e. Geological Survey of Ireland, Department of Transport, Department of Housing, Local Government and Heritage and local authorities.

⁵ Manufacturers, Importers, Distributors, Authorised Representatives.



required and represent the DCC-NBCO national position at EU and domestic meetings including participation at meetings of the:

- i. Administrative Co-operation Group for the market surveillance for construction products (AdCo-CPR)⁶ (bi-annual meetings).
- ii. Market Surveillance Forum⁷ (quarterly meetings).

7) Carry out market surveillance operations, including:

- i. planning market surveillance activity across all distribution channels, including online – assessing statistics, assessing trade flows across the European Union's external borders and employing risk assessment procedures for this purpose.
- ii. accessing buildings, land and vessels and commercial, industrial and storage premises, as well as online marketplaces, to undertake evaluations, examinations, tests or inspections of construction products.
- iii. requesting and assessing technical information to ascertain if a construction product is compliant with the requirements of Regulation (EU) No. 305/2011.

⁶ The AdCo-CPR Group is composed of representatives of Member States' market surveillance authorities and was established to pursue the following objectives: the exchange of information between Member States' authorities concerning the national market surveillance mechanisms and the adopted solutions; the achievement of a uniformly high level of enforcement of the relevant EU legislation; to reduce the overlapping of national surveillance operations; to diffuse good market surveillance practices; to exchange views and solve practical problems.

⁷ The Market Surveillance Forum was set up in 2009 by the Department of Business Enterprise and Innovation (DBEI) and has representatives from all Irish MSA. It meets regularly to discuss market surveillance issues and to coordinate a national response to EU market surveillance issues.



- iv. taking copies of records, or extracts from files, to facilitate the evaluation, examination or inspection of construction products.
- v. requiring an employee or a person in charge to provide information in a legible format on construction products.
- vi. requiring explanations in relation to a construction product from an employee or a person in charge.
- vii. taking photographs of a construction product, the place of manufacture and/or the place of storage of the construction product.
- viii. bringing persons and/or equipment to the place of manufacture or storage of a construction product to assist in such evaluations, examinations, tests or inspections as are considered necessary.
- ix. taking samples of a construction product for testing and examination; and arranging for such testing/examination by appropriate competent bodies.
- x. liaising and working closely with Customs personnel to co-ordinate effective surveillance at import location (ports etc.) and within tight timeframe.⁸
- xi. carrying out risk assessments and evaluations of the impact of non-compliances.
- xii. encouraging economic operators to take appropriate corrective actions to redress the position within a reasonable period of time.

⁸ Development of a Memorandum of Understanding between Dublin City Council – National Building Control Office and Revenue Commissioners will be required to provide a legal basis for the sharing of information relating to product import information.



- xiii. issuing a notice to require corrective actions to be taken by an economic operator within a specified period of time.
- xiv. taking legal actions where there is clear evidence of non-cooperation by an economic operator.
- xv. in the event of a serious risk taking procedures to prohibit or restrict a construction product from being made available on the market, to withdraw it from the market or to recall it, or to make its use subject to special conditions as deemed appropriate. facilitating and driving national co-ordination and international co-operation; information exchange and effective national and cross-border co-operation between market surveillance authorities.
- xvi. responding to information or market surveillance alerts from other Member States.
- xvii. using the Information and Communication System on Market Surveillance (ICSMS) as a European Union platform for the reliable exchange of information among market surveillance authorities.
- xviii. procuring specialist technical services e.g. laboratory testing of construction products, where required.
- xix. Ensure that the activities above are scheduled in such a way as to minimise travel time and cost.
- xx. Retain all records made during the delivery of the market surveillance function as evidence for potential prosecutions. All records must be documented and secured in a manner which will ensure their safe-keeping and integrity.



- xxi. Provide progress reports, in an agreed format to the Department of Housing, Local Government and Heritage summarising the market surveillance activities undertaken, any issues encountered, and any suggestions for improving service delivery. It is envisaged that four quarterly and an annual report will be submitted to the Department of Housing, Local Government and Heritage by DCC-NBCO. These should be submitted within two weeks of the end of the month to which they relate.
- 8) Liaise closely with Department staff in the Built Environment Advisory. This could include (but is not limited to) reporting on progress and discussing the findings from an inspection or test. Although some of this activity can be carried out over the telephone or by email correspondence, attendance at meetings at other convenient locations, will be required from time-to-time.
- 9) Staff undertaking the work specified in 7) will need to be appointed as 'Authorised Officers' by the relevant body. 'Authorised Officers' must be aware of and understand their responsibilities and will be required to perform their duties in accordance with the Regulations at all times. The powers of 'Authorised Officers' are set out in national legislation relating to the regulations (S.I. No. 225 of 2013).
- 10) DCC-NBCO must ensure that staff appointed as Authorised Officers:
- i. are appropriately experienced and trained to undertake inspections and investigations, and have received suitable legal training, as they may be required to testify in court in circumstances where legal proceedings are taken against an economic operator.
 - ii. adhere to the Guidelines for Market Surveillance Authorities published by the County and City Management Association to assist Market Surveillance Authorities in carrying out their functions under the EU Construction Products Regulation.



- iii. adhere to the Good Practice for Market Surveillance Authorities published by the European Commission (January 2017)⁹
- iv. adhere to relevant Circular Letters issued by the Department of Housing, Local Government and Heritage.

⁹ Developed by market surveillance experts who are members or Chairpersons of various Administrative Cooperation (AdCo) groups - reflects good practice in the field of market surveillance and aims to contribute to a better understanding and consistent application of EU rules on market surveillance of non-food products across different sectors.