

CE MARKING ENFORCEMENT

A number of members are concerned that CE Marking will not be enforced. Below we will explain why we are confident that it will be enforced.

Building products are CE Marked under the Construction Products Regulations (CPR), the UK CPR of 2013 enforces the EU CPR of 2011 and was laid before Parliament on 7th June 2013, Coming into force on 1st July 2013.

Article 4.3 says: A person who supplies a construction product to which the CE marking has been affixed in breach of any provision of Article 8 or 9 of the 2011 Regulation shall be guilty of an offence.

Article 4.4 says: A person guilty of an offence under this regulation shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.

Article 7 says: When in relation to any construction products an enforcement authority—

(a) has reasonable grounds for suspecting that any offence under regulation 4, 5 or 6 has been committed; or

(b) considers that there are grounds for the service of a notice under this regulation in accordance with Schedule 1 (grounds for service of notices in relation to the 2008 Regulation and the 2011 Regulation), the authority may serve a notice ("a suspension notice") prohibiting the person on whom it is served, for such period ending not more than six months after the date of the notice as specified in the notice, from supplying the products without the consent of the authority.
(2) A suspension notice may also require that person to keep the authority informed of the whereabouts throughout that period of any of the products concerned.
(3) A suspension notice may include a requirement that any construction products to which it relates that have been made available on the market be recalled.

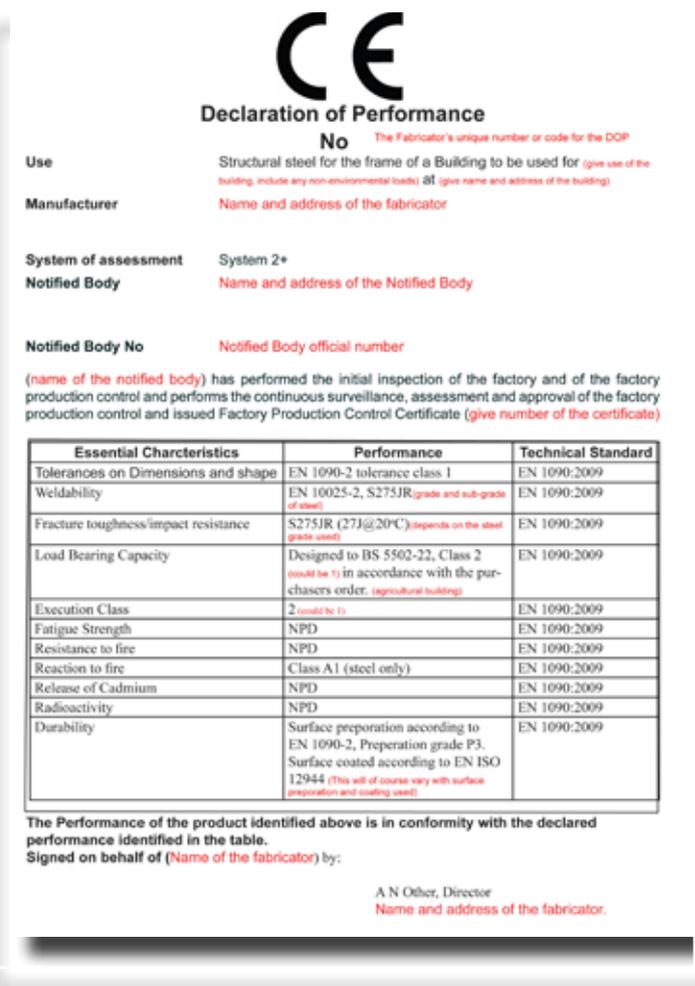
Article 7.7 says: Any person who contravenes a suspension notice shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.

Article 8. 1 says: An enforcement authority in England and Wales or Northern Ireland may apply under this regulation for an order for the forfeiture of any construction products on any of the grounds on which the enforcement authority may serve a suspension notice under regulation 7(1) in relation to the products.

Article 12.1 says: The Secretary of State may serve on any person a notice ("a notice to warn") requiring that person, at that person's own expense, to publish, in a form and manner and on occasions specified in the notice, a warning about any construction products which that person supplies or has supplied which are described in the notice.....

The enforcement Authority is Trading Standards and they have been enforcing CE Marking of electrical and other products for many years, so it is nothing new to them.

I wrote to our local Trading Standards in Suffolk to advise them of some of our members concern over enforcement and they wrote back to say:



prohibiting the person on whom it is served, for such period ending not more than six months after the date of the notice as specified in the notice, from supplying the products without the consent of the authority.

(2) A suspension notice may also require that person to keep the authority informed of the whereabouts throughout that period of any of the products concerned.

(3) A suspension notice may include a requirement that any construction products to which it relates that have been made available on the market be recalled.

Dear Mr Hutchinson
Construction Products Regulation 2011

Thank you for your letter dated 21st October concerning the forthcoming changes to legislation and the implantation of the above Regulations.

As you have stated the above Regulations will mean that CE marking will be mandatory in the UK for products to which the regulations apply. Manufacturers and importers have until July 2013 to ensure that their construction products meet the CE requirements of the new Regulation.

According to the Regulations, the requirement for CE marking will apply to:

"any product or kit which is produced and placed on the market for incorporation in a permanent manner in construction works or parts thereof and the performance of which has an effect on the performance of the construction works with respect to the basic requirements for construction works. "

So any products that fall under that definition will need to display the CE mark.

Trading Standards enforce a wide range of legislation, from safety to food, fair trading and weights and measures. We work on a demand basis, responding to complaints and enquires from businesses and consumers, but also on targeted project work where we feel there is a need and resources for a proactive approach.

You state that your members are concerned that the legislation will not be enforced. As with all other areas, if any complaint is received about an alleged non-compliance, the matter would be fully investigated and a wide range of options are available to officers, from advice and assistance, through to criminal prosecutions in the most serious cases. I would hope you would reassure your members that all complaints would be investigated and there may be serious consequences of non-compliance with these, and all other legislation that falls within the remit of trading standards.

If any member within Suffolk requires advice from Trading Standards they would be advised to call our general enquires line on 01473264859. For members outside Suffolk, they should contact their local Trading Standards Service. This same approach should be used to report any allegations of non-compliance.

I hope this information is of assistance. If you require any clarification of any points raised, please do not hesitate to contact me.



European Organisation for Technical Approvals
Europäische Organisation für Technische Zulassungen
Organisation Européenne pour l'Agrément Technique

The above makes it very plain that Trading Standards will follow up any complaint. It is very easy to check if a company is accredited to CE Mark their structural steel as all Trading Standards has to do is write and ask for their accreditation from a Notified Body and if they cannot supply it they will be in contravention of the CPR.

Not only will the firm be liable for a suspension notice, which if served will mean that they cannot supply structural steel for up to 6 months, which will bankrupt most firms, but they might also deem it necessary to recall structural steel supplied since 1st July 2014.

So any firm deciding to supply structural steel, without a CE Mark is taking a serious risk, particularly as many frame manufacturers who have gone to the expense and effort of gaining accreditation, are not going to idly stand by and allow their competitors to undercut them, because they have not bothered to be accredited. They so will report them to Trading Standards and if they wish to do



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this anonymously, they can advise the National Secretary who will report to Trading Standards for them.

ETAG 25

There are those that are trying to avoid CE Marking by claiming that they provide kit buildings and so do not need to CE Mark.

If they are making kit buildings and that is all they supply, then they do not need to CE Mark, but there are two major issues with this:

1. They can only supply kit buildings, so no lean-tos or replacement steel work as they will have to be CE Marked to BS EN 1090.
2. Although no CE Mark is required they still need to comply with the requirements of the ETAG, which are considerably more onerous than CE Marking to BS EN 1090, which only covers the structural steel. The ETAG covers the complete building and says that:
 - a. The components in a kit may be manufactured as metal members (such components should be in accordance with the relevant EN) **ED so the steel still needs to be fabricated in accordance with BS EN 1090.**
The minimum content of the kit to be assessed shall include the following, as far as is necessary for the satisfaction of the Essential Requirements applied to the building:
the structural components of the building (walls, columns, beams, floors, roofs), the connection of the building to the substructure and the specification of the essential components of the external envelope such as thermal insulation, cladding, roof covering, internal lining, windows and external doors (see note).
The kits are assembled according to pre-designed technical solutions for joints between the structural components and construction details.
3. So Trading standards will just have to ask for proof that the firm is complying with the above and if they cannot prove it then the comments in the above letter from Trading Standards come into play

THE OLD CHESTNUT

“AGRICULTURAL BUILDINGS DO NOT NEED TO BE CE MARKED”

It is surprising but some ‘experts’ who should know better are still claiming the above.

It is based on 2 misunderstandings, both from Derogation 5 (a) of The Construction Products Regulation.

The Derogation says that a product does not need a Declaration of Performance (CE Mark) where:

“the construction product is individually manufactured or custom-made in a non-series process in response to a specific order, and installed in a single identified construction work, by a manufacturer who is responsible for the safe incorporation of the product into the construction works, in compliance with the applicable national rules and under the responsibility of those responsible for the safe execution of the construction works designated under the applicable national rules;”

These ‘experts’ simplistically read this and make 2 arguments, listed below, which are both wrong:

1. They say that each building is individually manufactured or custom-made in a non-series process. Each building might be individually manufactured but if fabricated in a production facility, it is series production.
 - a. This issue was resolved in 2005, when Guidance Paper M was produced to clarify a number of issues, one of which was different categories of production. 3 categories are given, with CE marking required for the first 2 but not the third. The categories are
 - i. Conventional series production,
 - ii. Series production of products with varying properties¹⁷
 - iii. and Individual (and non-series) production.
 - b. Note 17 says “Examples of ‘series’ products with varying properties are steel structures, where each product/kit is of a different size, shape and strength, and windows manufactured in a wide range, where many products are of the same design, but of different sizes.” So this makes it plain

that structural steel is Series production of products with varying properties, and has to be CE Marked.

2. The second argument against CE Marking is that “in compliance with the applicable national rules and under the responsibility of those responsible for the safe execution of the construction works designated under the applicable national rules;” Means that because there is no Building Control requirement for many agricultural buildings, in England, no CE Marking is required.
 - a. In my view this falls down on 2 counts
 - i. Agricultural buildings in the UK should be manufactured to BS 5502, which are the national rules.
 - ii. Secondly the national rules refer to the Member State, which is the UK, in parts of the UK in particular, Scotland, there are Building Control regulations on the majority of agricultural buildings.

Be very wary of experts that claim they have found a loop hole and ask them if they are prepared to indemnify you against any costs associated with them giving the wrong advice, because following this type of advice could bankrupt your firm.

DECISIONS TAKEN AT OUR LAST COUNCIL MEETING

- We would go ahead with the FAB Awards 2015, a lot more about this elsewhere in Countryside Building.
- The Next AGM would be on the 24th April 2014, in Chester, there is more about this elsewhere in Countryside Building
- Responsible Welding Coordination Training it was advised that our next course was in March and we will hold more if there is a demand.
- It is recognised that it is unlikely that anyone taking the course in March will be able to pass the gap analysis to confirm their competence before July this year. So for CE Marking purposes they will need to use a competent outside consultant to act as their RWC until they have their own.
- The secretary reported that a lot of frame manufacturers are still joining for the help that we can give in CE Marking. It is felt that a lot would still not be able to CE Mark by the 1st of July. At our last meeting we agreed that any member who could not CE Mark by 1st July would have their membership withdrawn.
- At this meeting it was agreed that we should still work with those that were working towards CE Marking and so rather than having their membership withdrawn they would be suspended. They would not be promoted as competent contractors on the website or in the centre of Countryside Building, but they could attend meetings and training courses on CE Marking as long as they show that they are working towards CE Marking.
- The RIDBA load tables were discussed and a number of issues were raised. It was agreed that the issues should be listed and then a meeting held to discuss them and for training from Martin Heywood on how the Green Books should be used for joints and haunches, based on the information in the Load tables.
- It was agreed that as farmers were not competent in structural engineering, it would be wrong for RIDBA Members to design their frames for farm buildings to anything other than BS 5502-22 2013 for the loads and the Eurocodes for the actual design calculations. Any frame manufacturer who designed to other standards such as the old BS 5502-22 or British Standards would have their membership withdrawn.
- An individual Member who was a frame manufacturer had asked to attend our RWC course but the secretary had refused his attendance as he said that it was only open to Corporate Members. The Member had paid the difference to be a small Corporate but asked that the matter be considered by Council. This was discussed and it was agreed that as the member was acting as business and employing sub-contractors as required he should be a corporate member, and further that individual members should not enjoy the benefits of Corporate Membership.
- RIDBA is represented on a number of HSE committees and to help our representatives it would be of benefit if they knew as soon as possible of any relevant accidents to members' employees or subcontractors, so it was agreed that RIDBA contracting members should advise the secretariat on a confidential and timely basis of any deaths or major RIDOR injuries and their causes, plus any prohibition notices or prosecutions by the HSE.