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Mr Vaughan Gething MS  
Minister for Economy  
The Welsh Government  
5th Floor, Tŷ Hywel  
CARDIFF BAY  
CF99 1NA

Friday, 10 June 2022

Dear Minister

### **UKCA CONFORMITY ASSESSMENT & CERTIFICATION: 01 JANUARY 2023**

I am writing, as Chair of the Wales Construction Federation Alliance (WCFA), to ask for your assistance as Welsh businesses grapple with new UKCA conformity assessment & certification arrangements that replace CE Marking after 31 December this year.

#### **Background**

The UK Government is introducing a new “UK Conformity Assessed” mark for goods placed on the market in Great Britain from 1 January 2023. Ministers seek new powers to end the recognition of CE Marking in favour of UKCA Marking in the recently-passed Building Safety Act.

There is deep frustration among manufacturers & importers that, at present, there is no route to accept historic test data & reports from EU Notified Bodies for use in complying with UKCA Marking. This poses a particular problem for goods in relation to the Assessment and Verification of Performance (AVCP) System 3. If manufacturers and distributors want to continue selling their goods in Great Britain, they have to be re-tested and certified by an accredited UK Approved Body.

#### **Industry Efforts**

The Wales Construction Federation Alliance and others are concerned at the lack of progress between the UK Government and individual companies, trade associations and certification & testing bodies to prepare properly.

At the UK level, Welsh companies - along with other partners in England & Scotland - are collaborating to find ways round common problems through joint efforts in the UK Construction Leadership Council's Standards and Regulatory Alignment Group. For over 18 months, this group has met fortnightly to work through complex technical & legal difficulties involving (for example) Designated Standards, Approved Bodies, Technical Assessment Bodies and AVCP Systems.

For most companies, this means materials & products under the EU Construction Products Regulation 2011 (as amended in 2019 and 2020). The Department for Levelling Up, Housing & Communities is responsible for the CPR. The Department for Business, Energy & Industrial Strategy is responsible for other regulations applicable to manufacturing or building services. For example: the Lifts Regulations 2016; the Electrical Equipment (Safety) Regulations 2016; or the Supply of Machinery (Safety) Regulations 2008.

### **Capacity, Capability and Competence**

There is insufficient testing capacity and capability for manufacturers to have their goods assessed and certified for the British market, using UK-based Approved Bodies, by the end of this calendar year. There are simply not enough approved companies or qualified people to conduct the huge number of assessments & certifications required to gain UKCA Marking in time.

For example: there are no UK Approved Bodies able to test:

- insulation: most types of pipe insulation and duct insulation;
- trench heating: most types for residential, commercial & municipal buildings;
- renders: several types of synthetic renders and render-based brick slips;
- glass: several types of coated and laminated glass inc. mirrors;
- plastic pipes: several types of thermoplastic pipes for underground drainage.

For other goods, there are scant few UK Approved Bodies available:

- radiators: only one approved company whose entire annual capacity is fully booked;
- fire doors: only two approved companies for smoke leakage tests;
- sealants: only one approved company - most tests take up to 3 months to allow for curing.

### **Catch 22**

UK-based testing houses have stopped offering certain tests (or never did) because such tests are widely available in the EU - leading to gaps in the British market. The catch is that manufacturers are obliged to have goods tested to a standard that may no longer be accredited by UKAS, the national accreditation body - or by firms that no longer offer tests for various reasons - e.g. retirement of key staff not yet replaced. In effect, Whitehall will have (unwittingly) banned the sale of some goods that simply cannot be tested in the UK through no fault of the manufacturer.

The upshot is that with :

- a. continued uncertainty about as-yet-unknown future regulations,
- b. large capital costs for SMEs to invest in more or new equipment & facilities, and
- c. next-to-no time available to find and train specialist staff,

there is little appetite for businesses to take the plunge.

### **Consequences**

With 5 months to go, those affected are exasperated that uncertainty, instability and confusion prevails. This is wholly unacceptable and adds to the specification, compliance & familiarisation costs that manufacturers face - notably the money being wasted on double-testing of goods.

Whitehall has told businesses to prepare for the end of CE Marking on 31 December 2022. Legislation is required but the DLUHC cannot give a firm date for this. The risk is that faced with ongoing difficulties - like higher raw material, energy, labour & transport costs and other inflationary pressures - businesses do not bother, hoping somebody will come up with answers in time.

There are reports of distributors notifying manufacturers that only UKCA Marked goods will be accepted - and that CE Marked goods will be rejected. This so-called "stock cleansing" prior to 31 December is unwise and likely to be destabilising for everybody concerned.

### **Solutions**

The situation is already serious for British manufacturers who are spending hundreds of thousands of pounds on testing to both UK & EU standards. With 5 months to go, there are too many unresolved questions about post-2023 arrangements.

The obvious solutions are:

- the UK Government defers the 31 December 2022 date to allow time to work through the outstanding issues - notably to allow EU test reports to be used for a defined period of time after 1 January 2023.
- the Welsh and/or UK Governments find ways to support the fledging British testing market - perhaps financial - and encourage participants to boost overall capacity & capability.
- better still, London and Brussels negotiate an UK-EU Mutual Recognition Agreement where (for example) historic test results are accepted in both jurisdictions. This is politically difficult and the European Commission refuses to contemplate this.

The preferred solution is for ministers to pause now that the Building Safety Act is on the statute book - and take heed of what industry is telling them. The WCFA view is that deferring the 31 December 2022 date is obvious and necessary - and UK ministers should move quickly to say so and dispel uncertainty. Drafting the statutory instruments to bring in new provisions is critical, and must be done correctly to avoid unintended consequences that harm British businesses. It is sensible and pragmatic to delay the secondary legislation to allow business to prepare properly.

UKCA Marking also applies to machinery and equipment (especially spare parts). Worn or damaged parts needing replacement will be CE Marked - and in many cases, they will no longer be in

production - or not supplied in sufficient numbers to make it economically feasible to obtain UKCA Marking. This has serious implications for routine maintenance or breakdowns - e.g. lifts awaiting safety components. The preferred solution is to allow replacement parts to meet the rules as they applied when the machinery or equipment was installed and put into service.

### **Nex Steps**

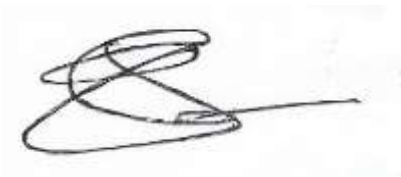
Despite industry's best efforts, decisions from UK ministers on various policy and procedural matters are long overdue. For example: whether (or not) manufacturers can sub-contract testing to EU27 companies when there is no test available in Great Britain. Only governments can provide solutions: businesses did not ask for these regulatory changes and we cannot pass laws.

If the situation described is not resolved, and soon, the logical conclusion is that goods cannot be sold after 1 January - and construction, house-building and property RMI will slow down or stop.

Our 'ask' is for the Welsh Government to recognise the concerns expressed and to see if there is scope within devolved powers to assist. Any representations you can make to the UK Government on our behalf would be gratefully appreciated.

Thank you in anticipation.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Ed Evans', written over a light blue grid background.

**Ed Evans**

**Chairman, Wales Construction Federation Alliance (WCFA)**

### **Wales Construction Federation Alliance (WCFA) :**

Our Alliance represents the six major construction, civil engineering and materials employer trade federations in Wales, namely, the:

- Civil Engineering Contractors Association (CECA) Wales
- Actuate UK
- Federation of Master Builders (FMB) Cymru
- Home Builders Federation (HBF) Wales
- Mineral Products Association (MPA) Wales
- Builders Merchants Federation (BMF) Wales

We have elected to work together to inform and influence the Welsh Government and other key decision makers to ensure that the best possible decisions are made for the economic, social and environmental well-being of Wales.