



## TOYS and BREXIT – “No Deal” - 14th December 2020

### Product Technical Issues including Markings

Endorsed by



Record of Amendments			
Version	Date	Amendment	Section/page affected
1	08/10/2020	First Publication in Product Technical Issues format previously part of the BTHA larger Brexit guide until version 5 of that guide	
2	14/10/2020	Update to legal notice, minor re-phrasing in introduction and section 4.2.1, adding “where required” to notified body number statement section 4.7, addition of Primary Authority assurance page and MKTS quote. Updated UK DoC content	Legal Notice Section 1, 4.2.1, 4.6.1, 4.7
<b>3</b>	<b>08/12/2020</b>	<p>Updates to typos and grammar, UK changed to Great Britain and GB where relevant, Change IP end date to IP completion date</p> <p>New date</p> <p>Additional comment about UK Government and accompanying documents</p> <p>Chart updated to include accompanying documents</p> <p>Removal of text relating addresses to CE marks and UKCA marks</p> <p>New question 6</p> <p>Addition of formaldehyde and Aluminium</p> <p>Minor amend plus designated standards link</p> <p>Addition of Toy Regulations list for DoC format plus designated standards link</p> <p>Notified body update</p> <p>Additional comments on UKNI marking</p> <p>New links added</p> <p>Updated table in Appendix A with link to source</p> <p>All changes except for typos, GB and IP completion date highlighted in yellow</p>	<p>Throughout</p> <p>Section 1</p> <p>Section 4.2</p> <p>Section 4.2.1</p> <p>Section 4.2.5</p> <p>Section 4.2.6</p> <p>Section 4.3.1</p> <p>Section 4.5</p> <p>Section 4.6</p> <p>Section 4.7</p> <p>Section 5</p> <p>Section 7</p> <p>Appendix A</p>

#### LEGAL NOTICE

This document contains guidance only.

It is intended to explain the expected obligations and how to fulfil them. However, readers are reminded that the text of the original regulation, directive or standard is the only authentic legal reference and that the information in this document does not constitute legal advice. Our Primary Authority, MKTSD, will continue to review, support and advise the BTHA on the content of this Brexit Guide, during the transition period to offer the most up to date advice to it’s members.

The British Toy and Hobby Association does not accept any liability with regard to the contents of this document.

# Primary Authority Assurance



Milton Keynes Council as assured BTHA guidance as 'primary authority advice'

The level of assurance that this document can give individual members is detailed below

## 1. BTHA Coordinated Primary Authority Partnership

British Toy and Hobby Association members who are included within the 'regulatory group', as decided by the BTHA, will be able to legally rely on primary authority advice issued by Milton Keynes Council via BTHA.

This primary authority advice will be tailored to the collective needs and circumstances of the businesses that will be eligible to receive it.

Any proposed enforcement action in the UK against any of the BTHA members within the 'regulatory group' that is inconsistent with this BTHA Primary Authority assured advice, will be "directed against". This means that Milton Keynes Primary Authority may direct an enforcing authority not to take proposed enforcement action (thereby blocking the enforcement action) where such action is inconsistent with primary authority advice.

Full members of the BTHA are all invited by BTHA to join the primary authority 'regulatory group' but can opt out of the scheme if they choose to.

## 2. Direct Primary Authority partnerships

British Toy and Hobby Association members who are part of the 'regulatory group' under the coordinated primary authority arrangement with Milton Keynes Council CAN also have a direct primary authority partnership with Milton Keynes Council or another local authority of their choice.

BTHA members who are included in the coordinated primary authority scheme, and who also have a direct primary authority partnership, are able to enjoy the benefits of legally relying on the BTHA Primary Authority assured advice and can also obtain other primary authority assured advice tailored to their individual business needs and circumstances.

They will have control over any questions and requests for advice at their own cost.

## 3. No Primary Authority Partnership

BTHA Full members can choose to opt out of being a member of the scheme by confirming annually or contacting [admin@btha.co.uk](mailto:admin@btha.co.uk) at any time. In some cases these companies may not have a primary authority partnership with Milton Keynes or any other Council.

Such members can use the guidance with the knowledge that it is BTHA assured guidance however as the members are not in a Primary Authority partnership they cannot legally rely on this guidance.

Further details regarding the Primary Authority agreements can be obtained from the BTHA.

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# 1 Introduction

The following guide is intended to help BTHA members prepare for Great Britain exiting the EU. It has been put together to assist BTHA members in the dynamic circumstances surrounding Brexit, to give best available advice based on what the BTHA currently knows, as of **14<sup>th</sup> December 2020**. As a reminder, as always with such guidance, the document is the best endeavoured advice to assist members to plan, and does not constitute legal advice.

Negotiations for a Free Trade Agreement (FTA) are taking place – however, it seems unlikely that the two sides will reach agreement before the agreed negotiating time runs out. It should be noted that a deal keeping the two party's legislation aligned seems unlikely.

Assuming no comprehensive alignment agreement is reached, EU legislation will cease to apply in Great Britain (GB) and UK legislation will be used from **1st January 2021**. However, in some cases the UK will allow transition times for GB companies for certain aspects of the changes.

Furthermore, it can be assumed that UK Enforcement Authorities are very likely to be pragmatic in their approach to non-conformities arising from BREXIT changes to UK legislation. The same cannot be confirmed for trade with the EU where, in the absence of a deal, compliance may be enforced immediately. It is worth noting that the EU legislation is NOT CHANGING, it is only GB's status under EU law that will be different.

In the event of any deal some or all of the contents of this guidance may change. In particular a deal would make it more likely that there will be some mutual recognition of local procedures, institutions and bodies. In addition, transition periods may apply in both territories.

The content of this guidance is based on Government documents and discussions to date but cannot be fully confirmed. In some cases, the advice is based on a BTHA interpretation of the situation or on what is reasonable to expect companies to do based on the timings, previous advice and resources available in the current climate. In these cases, the advice may be outside UK Government guidelines, and this will be highlighted where appropriate in the text. It should be noted that being unable to comply with GB specific labelling guidance does not affect the safety of the products.

It would be prudent for companies taking significant steps to comply to be aware of the advice which is not in line with UK Government guidance and to take account of any changes that have occurred since this document was drafted. It may also be advisable to seek further third-party help and companies should themselves refer to the government and EU white papers and advice. Additionally, companies who have a Primary Authority or Home Authority may wish to avail themselves of the opportunity of seeking advice through that channel. This document has been endorsed by the British Retail Consortium and the Toy Retailers Association. Both these bodies will be advising their members to follow the BTHA recommended advice.



*"The TRA welcomes this guidance document and the advice it contains. Our Members can take comfort that suppliers following the guidance will have done their best to meet the challenging new product compliance requirements as the UK exits the EU."*



*"The BRC welcomes this guidance. We fully support the clear practical, pragmatic guidance it provides as we face the challenge of exiting the EU"*



*"Milton Keynes Trading Standards is delighted to have worked in partnership with the BTHA to develop this guide"*

## 2 Key Dates

The following timetable and phraseology apply:

Term	What is it	When is it	Notes
Exit Day	The Day the UK left the EU	31 <sup>st</sup> January 2020	
UK/EU Implementation Period (IP)	Time for the UK and EU to negotiate and agree their future free trade agreement (FTA)	31 <sup>st</sup> January 2020 - 31 December 2020 Could be extended by up to two years if both the UK and the EU agree	Existing EU legislation will apply to products imported and placed on the market in the UK
IP completion day	UK requirements start	1 <sup>st</sup> January 2021	UK becomes a third country with its own laws
UK Transition period	Time in addition to the transition period above given by UK regulators to give companies time to comply	See section 4.2.3 & 4.2.5	See section 4.2.3 & 4.2.5

## 3 Scope

This guidance covers “product issues” for toys in Great Britain and EU. Product issues relate to the Toy Safety Directive, similar CE marking directives and to labelling, safety and compliance issues only. It explains the differences from the current trading environment to the likely situation once Great Britain fully leaves the EU.

The EU has guidance for EU companies which covers many aspects of business and companies are advised to read these. The UK has also published guidance on what can be done during the transition, it is also recommended to check the “UK Transition” webpages.

## 4 Differences between UK Regulations and EU Toy Safety Directive

The following points are some of the key differences between the UK and EU post BREXIT for the **Toy Safety Directive and Toy Safety Regulations only**.

Where an aspect is not mentioned e.g. Technical Documentation it can be assumed that this aspect is identical in both territories.

Action points have been added where they can be established. Companies are advised to address these where applicable. No final consolidated text for the regulations is available at the time of writing.

The following tables outline our understanding to date.

### 4.1 Stock Affected

All stock placed on the GB or EU market (manufactured and offered for sale) before the end of the **UK/EU Implementation Period** can continue to be circulated **in the GB market and EU** without changes. New deliveries placed on the market after the **IP completion day** must comply with the appropriate requirements detailed in the following sections.

See section 4.4 for more details of the definition of “placing on the market”.

## 4.2 Product Markings

This section contains marking requirements for both conformity marking and addresses and outlines some of the difficulties that operators will have in complying with the requirements found in UK Government guidance and legislation. The sections related to conformity marking and address markings are followed by some Q&A's to try to provide clarity and advice on an uncertain situation and are primarily aimed at GB requirements. In all cases, although different terms are used, we consider that "a document accompanying the toy" means the following:

- Instructions
- Leaflet
- Packaging

In addition, for the purposes of Brexit it can also mean:

- Shipping paperwork
- Customs papers
- Invoices to GB customers
- Transit carton labels
- Pallet labels
- Declarations of Conformity even where links are supplied to electronic documents
- Alongside the above, but not as an alternative, you can use your company website to provide more information, access to product details and contact points for retailers, consumers and enforcement bodies.

The UK Government has given this expanded definition of accompanying documents within Toys (Safety) Regulations 2011 guidance and the above list reflects this. Accompanying documents would follow each batch of products through the distribution chain. Your contact details must follow each product through the distribution chain, but not necessarily by one document per product. Ultimately, the end user, each distributor (and a regulator) must be able to access the information.

The use of "accompanying documents" is acceptable until 31<sup>st</sup> December 2022. The UK Government guide only refers to "importers" addresses in this context but it would be reasonable to assume that any new UK address could be treated in the same way to ensure access to a UK representative.

### 4.2.1 Barriers to achieving markings

There are a number of barriers to achieving the marking requirements as follows:

- Many companies have been waiting for a deal in the hope that it would have removed some requirements and saved significant costs.
- A consolidated text of the Toy Safety Regulations is still not available at the time of writing.
- Official guidance was only published on 1<sup>st</sup> September 2020 giving under 4 months until **IP completion day**
- A packaging artwork change can take 18 – 24 months.
- Limited free space available on packaging means artwork redesigns are often required.
- A product engraving change can take more than 24 months to achieve.
- Mould changes to allow markings on the product can be costly and have been quoted by BTHA members as being between US\$25 and US\$100 per line. For one member, as an example, this would cost US\$500,000 - US\$1,000,000 for their entire range.
- Many companies have limited influence over what appears on the actual product depending on their supply chain structure.
- Companies with large ranges are bearing more cost and complication through stock holding which may be held globally in numerous locations. Newly marked stock may take a while to work through warehouse systems and no systems are currently split between UK and EU supply.
- The space on most products is very limited and already taken up with address details in many instances.
- Toys with multiple components pose a difficulty when determining marking locations and rarely have on product markings, which is indicated as permitted under EU Commission guidance.

In addition, the original guidance from the BTHA which was based on information received at the time stated that all types of importer address marking would have an 18 month transition period (this guidance was within the document shared with Government and received an award from BEIS). It has only recently become clear that the transition only applies to adding the importer address to the actual toy, but it must be added to accompanying documentation from 1<sup>st</sup> January 2021. This will have adversely affected members ability to comply who were following the original advice.

Because these barriers exist, full compliance with the Government’s recommendations in the timescales required will not always be possible. Therefore, the BTHA has provided the following comparison summary.

### Comparison Summary of UK Government and BTHA Marking Recommendations

OBLIGATION	DATE	GOVERNMENT GUIDANCE/LEGISLATION	BTHA POSITION considering section 4.1 Barriers. Also see 4.2.3 to 4.2.6
UKCA mark	Now – IP completion day	Current rules apply (CE marking). UKCA may be used but no legal status	Agree
	IP completion day - 31 <sup>st</sup> December 2021	CE mark accepted. UKCA mark can be legally be used. Can appear on packaging <b>label affixed to the toy or accompanying documentation</b> . Required immediately for UK Type approved products Existing CE marked stock, on the market before 31 <sup>st</sup> December 2020 can be sold through in both markets.	Agree
	1 <sup>st</sup> January 2022 - 31 <sup>st</sup> December 2022	CE mark no longer accepted UKCA mark must be used. Can appear on packaging, <b>label affixed to the toy or accompanying documentation</b> .	Agree <u>but may not be possible for some companies</u> The UK Government have confirmed that a “placed on the market protocol” will be applied to this date
	After 1 <sup>st</sup> January 2023	UKCA marking to be on product where required	Agree. But note that UKCA marking can appear on the packaging, leaflet or instructions, which is permitted by the Toy Regulations, but where other regulations may require it on product. <u>This will not be possible for toys in most cases</u> <b>The UK Government have confirmed that a “placed on the market protocol” will be applied to this date</b>
Manufacturer Address	Now – IP completion day	Current rules apply (UK or EU address)	Agree
	After 1 <sup>st</sup> January 2021	GB address required on product/packaging/instructions according to specific legislation EU addresses can only be used with a GB based importer or GB Authorised Representative address	BTHA advise that for CE marked stock (acceptable for products placed on the market until 31 <sup>st</sup> December 2021) EU addresses can continue to be used. Where the UKCA mark is used, we would recommend adding a UK address. <b>UK Government require relevant UK addresses from 1<sup>st</sup> January 2021. The BTHA would advise that the accompanying documentation used for importer addresses should apply to manufacturer addresses as well.</b> According to the Toy Safety Regulation the address is required on the product <b>or where the size or nature of the toy precludes the information from being marked on the toy</b> on packaging or leaflet or instructions Follow the toy regs with respect to the placement of the mark, even if other regs apply. <u>In our opinion in many cases it will not be possible to add an additional address to the product</u>
	Now – IP completion day	No advice	Current rules apply

<p><b>Authorised Representative address</b></p>	<p>After 1<sup>st</sup> January 2021</p>	<p>No advice</p>	<p>BTHA advise that for CE marked stock (acceptable for products placed on the market until 31<sup>st</sup> December 2021) EU addresses can continue to be used. Where the UKCA mark is used, we would recommend adding a UK address</p> <p>UK Government require relevant UK addresses from 1<sup>st</sup> January 2021. The BTHA would advise that the accompanying document use for importer addresses should apply to Authorised Representative addresses as well.</p> <p>For toys the AR address is not required on the product but is appropriate on the packaging or instructions</p> <p>It is recommended to follow the Toy Regulation with respect to the placement of the mark, even if other regulations may apply. <u>In our opinion an AR address will not be added to the actual product</u></p>
<p><b>Importer address</b> (n/a if the Manufacturer or AR UK address appears)</p>	<p>Now – IP completion day</p>	<p>Current rules apply (importer into the EU where the manufacturer is based outside the EU should be named where appropriate)</p>	<p>Agree</p>
	<p>IP end day – 31<sup>st</sup> December 2022</p>	<p>UK Importer address required where the manufacturer or Authorised Representative is not in the UK Where required, it is allowed to be ONLY on accompanying documentation or packaging – see definition in 4.2 above.</p>	<p>Not achievable in all cases. Whilst not confirmed it is very likely that a “placed on the market protocol” will be applied to this date</p>
	<p>After 31<sup>st</sup> December 2022</p>	<p>On the product</p>	<p>In most cases the importer address for toys is permitted to be on the packaging and not the product. See section 4.2.5 and 4.2.6 below. The UK Government have confirmed that a “placed on the market protocol” will be applied to this date</p>

Note: Accompanying information = instructions, leaflet, document accompanying the toy or packaging. For the short term the UK Government has published an expanded definition – see section 4.2 above



### 4.2.3 Conformity marking

UKCA marking applies to any products covered by UK Regulations that were previously CE marking Directives in the EU (see list in Appendix A).

The UKCA mark will be equivalent to the CE mark from **IP completion day** in the UK. Until then the UKCA mark has no status in law and the CE mark can be used when placing products on either the UK or EU markets.

During the **UK/EU Implementation Period** products with the UKCA mark can be placed on the UK market so long as they also carry the CE mark and the UKCA mark does not impact the visibility of this.

The UKCA mark and the CE mark can be used together on the same product. Given that regulations are likely to be technically aligned at least in the short term, it is expected most companies will use both marks, giving maximum flexibility.

EU	UK
<div data-bbox="288 685 600 871" data-label="Image"> </div> <p data-bbox="204 927 719 987">CE Marking rules will remain for all Toys sold in the EU</p>	<div data-bbox="970 685 1161 871" data-label="Image"> </div> <p data-bbox="762 920 1342 1077">UKCA marking will be required on any toy, to an affixed label or to the packaging placed on the GB market. The mark must be a least 5mm in height and must be easily visible, legible and permanent (meaning indelible)</p> <p data-bbox="762 1088 1289 1149">CE marked goods will still be acceptable until <b>1<sup>st</sup> January 2022</b></p> <p data-bbox="762 1160 1358 1352">Until <b>1<sup>st</sup> January 2023</b>, for most goods <b>including toys</b> (other than those subject to special rules) you have the option to affix the UKCA marking on a label affixed to the product or a document accompanying the toy or packaging. <b>After 1<sup>st</sup> January 2023 where applicable UKCA marks must be placed on the product.</b></p> <p data-bbox="762 1364 1337 1424">Existing CE marked goods, on the market before 31<sup>st</sup> December 2020 can be sold through</p> <p data-bbox="762 1435 1262 1464">See further guidance on UKCA marking below</p>
<p data-bbox="204 1491 304 1520"><b>ACTION:</b></p> <p data-bbox="204 1532 730 1653">No changes are required to continue to meet the EU Toy Safety Directive. UKCA marking will not be recognised in the EU and a CE mark must continue to be used</p>	<p data-bbox="762 1491 858 1520"><b>ACTION:</b></p> <p data-bbox="762 1532 1337 1588">Companies need to start adding the UKCA mark, see the guidance below.</p>

### 4.2.4 BTHA Questions and Answers – UKCA marking

UK Government Guidance – published on 1<sup>st</sup> September 2020

<https://www.gov.uk/guidance/using-the-ukca-mark-from-1-january-2021>

#### 1. What stock is affected by the new UKCA mark?

See section 4.1 Stock Affected and section 4.4 Placed on the market. Any products that were previously covered by CE marking Directives in the EU plus Aerosols (reverse epsilon marking) will require a UKCA mark. A list of the product types can be seen in Appendix A. Toys may be affected by more than one Directive.

## 2. Can I add the UKCA mark before IP completion day?

The UKCA mark will have no legal status but can be added now as long as the CE mark is also present. In the unlikely event the UKCA mark is not needed for any reason (e.g. the UK continues to use the CE mark if there is a “deal”) it will not be illegal for it to be present.

## 3. Are there situations when the UKCA mark must be applied immediately after IP completion day?

Only when all of the following apply;

- the product is for the UK market, and
- is covered by UKCA marking legislation, and
- requires mandatory third party conformity assessment (Type Approval) and
- the Type Approval has been carried out by a UK conformity assessment body.

This situation does exist in the toy industry where EC Type approval applies but it is quite rare. Companies would be advised to check the status of any EC type approved toys in their ranges. **Products that have already completed type approval and are CE marked can still be imported and sold.**

## 4. The UK Government guidance states that CE marked goods can be distributed until 1<sup>st</sup> January 2022. Is this stock our standard products we distribute now?

Whilst not explicitly mentioned in any guidance it is sensible that current CE marked products can be used. UK Government advice states that this is possible whilst EU and UK laws remain the same which, whilst not confirmed, is likely until 1<sup>st</sup> January 2022 and so it would be reasonable to conclude would still apply if the product continued to meet both UK and EU rules. **However the UK Government requires the UK address to be applied.**

## 5. Until 1 January 2023, for most goods (other than those subject to special rules) UK Government guidance states that you have the option to affix the UKCA marking on a label affixed to the product or on an accompanying document. Does the UKCA mark have to be on the product for toys?

The Toys Safety Directive allow the CE mark to be affixed to (a) the toy, (b) a label affixed to the toy or (c) to the toy's packaging. The rules remain identical for the Toy Safety Regulations and the UKCA mark. This means that a UKCA mark is NOT required to be printed or engraved on the actual toy under Toy legislation. Many companies have voluntarily added a CE mark to the toy itself, but it is the opinion of the BTHA that this does not mean that they must also voluntarily add the UKCA mark as well.

## 6. Is the UKCA mark required on the toy under any other legislation?

There are other CE/UKCA marking regulations that certain toys may be covered by (e.g. RoHS and Radio Equipment Directive). These Regulations state something similar to: *“The CE marking shall be affixed visibly, legibly and indelibly to the electrical equipment or to its data plate. Where that is not possible or not warranted on account of the nature of the electrical equipment, it shall be affixed to the packaging and to the accompanying documents”*. Manufacturers are responsible for assessing whether the mark is on the product or elsewhere. The BTHA would argue that toys do not have data plates like many products that directly sit under these regulations. Toys are primarily regulated by the Toy Safety Directive and UK Regulations and only secondly by other legislation and in our opinion the Toy legislation takes precedence and a UKCA mark on the product is not necessary.

The one exception to this would be under the Personal Protective Equipment Directive which commonly has the CE mark on the actual PPE to inform consumers. PPE is rare in toy products.

## 7. How will the compliance dates of 1<sup>st</sup> January 2022 and 1<sup>st</sup> January 2023 be managed to ensure stock is not withdrawn from sale on those dates but can continue to be distributed?

The UK Government Authority – BEIS confirmed in a meeting on the regulation of Goods, that they would apply a “placed on the market” methodology to the implementation of these changes. In this way stock already placed on the market can continue to circulate and new stock placed on the market after the date would need to comply.

## 8. Will the UKCA mark be suitable for use in Northern Ireland?

Northern Ireland, at the time of writing, will be continuing under EU laws. A product with only a UKCA marking will need a CE mark for circulation there as well. Stock marked with both the UKCA and the CE mark can circulate freely in Northern Ireland. In the rare case where a UK approved body carries out mandatory conformity assessment work for the Northern Ireland market, the CE marking must be accompanied by the UKNI marking.

### 4.2.5 Address Markings

*The market on which the product is placed determines the address requirements. A UK address will no longer be accepted by the EU and vice versa. Also see the section below on Economic Operators*

EU	UK
<p>All products placed on the EU market will need an EU address. Post <b>IP completion day</b> a UK address will not be accepted as the EU address</p> <p>The address will either be of an EU based Manufacturer (company or brand), the Importer or the Authorised Representative.</p>	<p>A UK address will be required on the toy or, where that is not possible, on its packaging or in a document accompanying the toy</p> <p>The address will either be of a UK based Manufacturer (company or brand), the UK Importer or the Authorised Representative</p> <p>UK Government require relevant UK addresses from 1<sup>st</sup> January 2021. Accompanying documents can be used until 31<sup>st</sup> December 2022 for importer address – see section 4.2 for further details and a definition of accompanying documentation. The BTHA would advise that the accompanying document use for importer addresses should apply to new GB Manufacturer and Authorised Representative addresses as well.</p> <p>See further guidance on address marking below in section 4.2 and in the table in 4.2.2</p>
<p><b>ACTION:</b> Any companies without an EU address will need to ensure one is added for stock placed on the market in the EU after <b>IP completion day</b> UK companies that distribute other brands to the EU will need to ensure EU addresses have been added to the products</p>	<p><b>ACTION:</b> Any companies without a UK address will need to ensure one is added for stock placed on the market in the UK after <b>IP completion day</b> However, it should be noted that CE marked stock will be accepted until 1<sup>st</sup> January 2022 (see section 4.2.3 Conformity marking) however the UK Government still requires a UK address on this CE marked stock. Once the UKCA mark is applied, a UK address must be used at the same time</p>

### 4.2.6 BTHA Questions and Answers – Addresses

UK Government Guidance – published on 1<sup>st</sup> September 2020

<https://www.gov.uk/guidance/placing-manufactured-goods-on-the-market-in-great-britain-from-1-january-2021>

#### 1. What stock is affected by the new address requirements?

See section 4.1 Stock Affected and section 4.4 Placed on the market. All stock is affected as traceability addresses are required by certain sector specific legislation e.g. toys and by the General Product Safety Regulation. EU addresses will be required for products circulating in the EU and UK addresses will be required for products circulating in the UK after 1<sup>st</sup> January 2021.

## 2. What type of address do I need to add?

Companies that sell products in the EU and the UK will need addresses for each market (along with CE and UKCA marks). Companies based in the UK probably already use their own UK address as a “manufacturer” or in some cases as an “importer” and this will continue to be acceptable for the UK. For stock they send to the EU however they will need an EU address. This could be one of their own EU offices, an EU Authorised Representative\* they appoint or their own customers as “importers”. EU addresses will be required (with CE marks) on **IP completion day**.

Companies based in the EU will be able to continue distribution in the EU with their current address. However, it is likely that they will need a new UK address for the UK market. This could be one of their own UK offices, a UK Authorised Representative\* they appoint or their own customers as “importers”.

## 3. When are EU addresses required?

EU addresses will be required for products sold in the EU immediately after **IP completion day**. It is unlikely that the UK will have any influence over this.

## 4. When are UK addresses required?

The UK Government Authority – BEIS confirmed in a meeting on the regulation of Goods, that UK addresses will be required after **IP completion day**. This is strictly following the draft legislation and does not offer the same UK transition period that official government guidance does for adding the UKCA marking.

Importer’s addresses must also be present immediately after **IP completion day**. The address can be on accompanying documentation (and not the product, see definition in section 4.2) until 31<sup>st</sup> December 2022 and on the product where relevant after 31<sup>st</sup> December 2022. It has been previously understood that the UK Regulations had included an 18 month transition period for any application of the importers address and previous, BEIS award winning, BTHA guidance has stated this.

It is the BTHA’s opinion that it is impossible to comply with this request from **IP completion day** (also see section 4.2.1):

The BTHA therefore recommends the following:

- a) Make sure that an appropriate UK economic operator is in place ready for **IP completion day** even if they cannot be suitably marked on the packaging or product
- b) Make sure websites are fully updated with the new economic operator details, such that the operator is as traceable as possible from the details that accompany the toy (also see 4.2).
- c) Begin to add new economic operator address lines to toy products/packaging/accompanying documents at the same time the UKCA mark is added where possible.

It should be noted that Distributors have obligations to hold information on their supplier chain and therefore Manufacturers and importers should be traceable via the place of sale.

## 5. Are the new addresses required on the actual product?

The text of the Toy Safety Regulation, and associated guidance, related to applying addresses to a product can be seen below. It has always been a manufacturer’s decision based on the text about whether the address can be applied to the actual toy. Space, design and formats all play a part and often decisions have to be taken on marking. The BTHA’s Primary Authority Assured Marking and Warnings guidance gives a priority order for companies to add the details. In order these are the Manufacturers Identification, the product identifications, the Manufacturers address, the importers identification and importers address.

In addition, many companies have limited influence over some products and will not be able to add any address details beyond the manufacturer. Finally, the costs associated with adding the address to moulds is prohibitive for just one market and the time currently available makes it “not possible” in many instances.

It should be noted that there are exclusions in the UK Toy Safety Regulation for the importers address where the toy’s packaging would need to be opened in order to apply the mark. There are no written requirements within the legislation for the Authorised Representative address to be applied to the actual toy.

The BTHA therefore recommends the following:

- a) Make sure that a UK economic operator is in place after **IP completion day**.

- b) Make sure websites are fully updated with the new economic operator details, such that the operator is as traceable as possible from the details that accompany the toy.
- c) Where an EU address is already on the toy this should take priority over an additional UK address as it is likely to be taking up all available space.
- d) Use the UK Governments expanded definition for accompanying documentation (see section 4.2) for the importers address wherever possible for any new UK address.

We therefore expect that additional UK economic operator addresses will, most likely, never be added to the actual toy when they are made to be compliant with both the EU and GB markets.

It should be noted that where the toy is not accompanied by the correct address that UK Distributors have obligations to hold the correct address and therefore manufacturers can be found easily.

## 6. I stock other products not under the legislation listed in appendix A. Do I need to add an address to this stock?

There is a requirement for producer tracability addresses under the General Product Safety Regulation (GB and EU) and from July 2021 in the Market Surveillance Regulation (EU only). As a result companies should be adding addresses to all products.

### Location of Addresses legal text

**Manufacturers Addresses** - The Toy Safety Directive (and therefore the UK Regulations) states that Manufacturers shall indicate their name, registered trade name or registered trade mark and the address at which they can be contacted on the toy or, where that is not possible, on its packaging or in a document accompanying the toy.

**Importers Addresses** – The UK Toys (Safety) Regulations state that an importer must ensure that the following information is marked on the toy.

- the importer’s name, registered trade name or registered trademark; and
- the address at which the importer can be contacted.

The above does not apply where either:

- the size or nature of the toy precludes the information from being marked on the toy;
- the importer would have to open the toy’s packaging in order to mark the information on the toy; or
- the importer imported the toy from an EEA state and places it on the market within the period of 18 months\* beginning with **IP completion day**; and
- the importer ensures that the information referred to is set out on the toy’s packaging or in a document accompanying the toy.

\*Note: This 18 month transition does not match the latest UK Government guidance – see section 4.2.5 and 4.2.6 above for more details.

**The EU Blue Book states in Section 4.2.2.1** “The name and address must, as a rule, be affixed to the product. However, it may exceptionally be moved from the product if this rule cannot be followed. This would be justified where affixing it to the product was not possible under reasonable technical or economic conditions excluding however esthetical reasons. It is up to the manufacturer to make this assessment.

The EU Blue book is not a UK document and there is no additional guidance text for the UK regulations. However, as the Withdrawal Agreement determines the UK leaves the EU without deviating rules we would determine that should mean the EU guidance can be interpreted for use in the UK market.

**\*Note** that the BTHA have established Authorised Representatives in the EU and UK that members can use – contact the BTHA for more details.

### 4.3 Toy Safety Legislation

Prior to BREXIT the Toy Safety Directive was already brought into UK Law by the UK Toys Safety Regulations. The regulations were sparse as they referred to the Directive in many areas rather than transposing the requirements directly. After Brexit all the provisions in the Directive will now appear in the Regulations.

EU	UK
<p><b>Toy Safety Directive 2009/48/EC</b></p> <p>The above Directive will continue to be the main legislation for toys in the EU for any company exporting into EU countries</p>	<p><b>UK Toys (Safety) Regulations 2011 No. 1881</b></p> <p>After <b>IP completion day</b> the existing Toys Directive 2009/48/EC will be replaced by the revised UK Toy Regulations which will now be comprehensive and include all aspects of the EU Directive</p> <p>The Toy Safety Directive requirements apply to products placed on the UK market before <b>IP completion day</b> and the revised UK Regulations apply to Toys placed on the market in the UK after <b>IP completion day</b></p> <p>A full list of UK Regulations versus EU Directives is published on the BTHA website for members</p>
<p><b>ACTION:</b></p> <p>On <b>IP completion day</b> no changes are required to continue to meet the EU Toy Safety Directive</p>	<p><b>ACTION:</b></p> <p>On <b>IP completion day</b> the EU Directive and the UK Regulations are intended to be the same and therefore there are no immediate changes to action. Companies should ensure they are aware of the new regulations, terminology and dates related to BREXIT as these will be important when establishing the conformity of products and will need to be used on UK technical documentation</p> <p>Final amendments to the UK Regulations will be made as we approach <b>IP completion day</b></p>

#### 4.3.1 Omissions in the UK Toy (Safety) Regulations

The Draft Regulations have been amended to address the missing limit for **phenol** and the lower limits for **BPA** and **lead** in accordance with the current TSD. The limit for Cr(VI) will be amended by a further SI when it comes into force. Certain other EU changes coming into force after **IP completion day** may or may not be included in the UK Regulations (in particular Formaldehyde and Aluminium requirements due in 2021).

The BTHA will monitor divergence of UK requirements and keep members informed of the steps they need to take to comply with both territories' requirements.

### 4.4 Placing on the Market

Placing on the market dates are often used to establish the legislative requirements the products need to comply with at that time.

EU	UK
<p>As before BREXIT goods will have to be placed on the market in the EU to get recognition of their legal status</p> <p>After BREXIT there is no recognition of goods placed on the market in the UK</p>	<p>After <b>IP completion day</b> goods will have to be placed on the market in the UK to get recognition of their legal status by UK Enforcement</p> <p>After BREXIT there is no recognition of goods placed on the market in the EU</p> <p>Goods already placed on the UK or EU market by <b>IP completion day</b> will be able to continue to circulate in, and between, the UK and the EU see section 4.1</p>
<p><b>ACTION:</b> Companies should monitor which products and deliveries arrived at which date to ensure they can comply with legislation as required in each territory (also see section 4.1). Specific knowledge of placing on the market in TWO different territories – the UK and the EU is required after Brexit</p>	

#### 4.4.1 Definition of Placing on the market

**EU Blue Book – 26<sup>th</sup> July 2016 - Definitions:** A product is placed on the market when it is “made available” for the first time on the Union Market. Products made available on the market must comply with the applicable Union Harmonisation legislation at the moment of placing on the market.

The concept of placing on the market refers to each individual product, not to a type of product.

Consequently, even though a product model or type has been supplied before, individual units of the same model or type placed on the market after new legislative requirements have become applicable must comply with the new requirements.

There are four main points that can be described as placed on the market as follows:

1. Where there is an order or contract whether written or verbal from a customer prior to manufacture, the product is placed on the market as soon as production is finished.
2. Where there is no order prior to manufacture but the item is purchased directly (FOB). Placing on the market occurs at the point where ownership transfers. In most cases this is when the products are delivered to the ship for shipment.
3. Where a product is manufactured and put into stock and is then offered for sale, e.g. in a trade catalogue. Placing on the market occurs when the offer is made e.g. when the catalogue is distributed.
4. With no order and no FOB arrangement the product is placed on the market when it is ready for sale. This is usually when it is in a warehouse ready for dispatch.

The UK Government Authority – BEIS, have issued a Q & A on the 7<sup>th</sup> Feb 2019 which states “If a good has been sold or is subject to an offer, then it is considered “on the market”. It does not need to be physically in the EU.” The item still has to be manufactured but does not have to be delivered.

#### 4.5 Standards

##### EU

**Referenced harmonised standards** are those that give a presumption of conformity with the requirements of the Toy Safety Directive. The list of harmonised standards published in the Official Journal apply. When standards are referenced the date when you need to stop using the old standard and use the new standard is given

Standards are developed in the EU by European development committees such as CEN and CENELEC of which the UK’s BSI is a member

**ACTION:** No action is required for EU trading and current testing will be the same

##### UK

Referenced standards will become **Designated standards** in the UK and the list of such standards will be published by the Secretary of State. These standards will be the same as those published in the Official Journal at **IP completion day**

We do not know if the UK will mirror the EU dates regarding when to start using a new standard and stop using the old standard.

BSI currently remains a full member of CEN and CENELEC. This membership is under review with its own transition period, currently extended until the end of 2021 although BSI is classed as a non-EEA member from 1<sup>st</sup> July 2020 which affects some voting rights

At least until the end of 2021, BSI experts will still be entitled to participate in CEN and CENELEC technical committees

BSI membership of ETSI is not affected

**ACTION:** No action is required at this stage and existing tests to EN standards will continue to be acceptable

Designated Standards can be found here: [https://www.gov.uk/guidance/designated-standards?utm\\_source=5b86f61c-d046-447e-8509-3b255e216d8e&utm\\_medium=email&utm\\_campaign=govuk-notifications&utm\\_content=daily](https://www.gov.uk/guidance/designated-standards?utm_source=5b86f61c-d046-447e-8509-3b255e216d8e&utm_medium=email&utm_campaign=govuk-notifications&utm_content=daily)



## 4.6 Declaration of Conformity (DoC)

### EU

The EU DoC will continue to be required for circulation in EU countries.

### UK

A new UK DoC will be required which is largely the same as the current EU version  
Manufacturers must list UK Regulations rather than EU Directives and UK Designated standards rather than standards listed in the Official Journal.  
UK DoC's will only be required for UKCA marked stock

CE marked stock is still acceptable in the UK until 1<sup>st</sup> January 2022. EU DoC's related to this CE marked stock are still acceptable.

**ACTION:** Existing DoC's can be used

**ACTION:** UK DoC's will be required for UKCA marked stock

### 4.6.1 UK DoC

The specific contents of the Declaration of Conformity are specified in Schedule 3 of the Regulations as follows:

1. *No (unique identification of the toy(s))*

2. *Name and address of the manufacturer or the manufacturer's authorised representative:*

3. *This declaration of conformity is issued under the sole responsibility of the manufacturer:*

4. *Object of the declaration (identification of toy allowing traceability). It must include a colour image of sufficient clarity to enable the identification of the toy.*

5. *The object of the declaration described in point 4 is in conformity with the following enactments:*

*(Note: The "enactments" or regulations will be those listed in the table in Appendix A)*

6. *References to the relevant designated standards used, or references to the specifications in relation to which conformity is declared:*

*(Note: Designated standards can be listed as EN71 or BS EN71)*

Designated Standards can be found here: [https://www.gov.uk/guidance/designated-standards?utm\\_source=5b86f61c-d046-447e-8509-3b255e216d8e&utm\\_medium=email&utm\\_campaign=govuk-notifications&utm\\_content=daily](https://www.gov.uk/guidance/designated-standards?utm_source=5b86f61c-d046-447e-8509-3b255e216d8e&utm_medium=email&utm_campaign=govuk-notifications&utm_content=daily)

7. *Where applicable: the approved body ... (name, number) ... performed ... (description of intervention) ... and issued the certificate:*

8. *Additional information:*

*Signed for and on behalf of:*

*(place and date of issue)*

*(name, function) (signature)*

(The EU DoC format can be found here:

<https://ec.europa.eu/docsroom/documents/5830/attachments/1/translations>)



## 4.7 Notified Bodies and EC Type Approvals

*Notified Bodies are those laboratories that have been authorised to carry out EC Type Approvals. EC Type Approvals are conducted by Notified Bodies on toys whose hazards are not fully covered by the Safety Standards. In general, this only relates to a very small percentage of toys perhaps 2-3%. Note that this does not apply to the “standard testing” in laboratories that are used when testing products to show compliance.*

EU	UK
<p><b>Notified bodies</b> established in the EU will continue their roles unchanged. For companies that have completed EC Type approval with an EU Notified body all certificates and paperwork will be valid in the EU</p> <p>After <b>IP completion Day</b> UK Notified bodies lose their status as notified bodies in the EU. Their EC type approvals will no longer be recognised in the EU. New assessments at an EU Notified body will need to be conducted or arrangements to transfer the file and corresponding certificate from the UK Notified Body to an EU Notified Body need to be made. The transfer of the certificates needs to take place before the end of the <b>UK/EU Implementation Period</b></p> <p>In these cases, the notified body number (where required) would need to be updated on packaging</p>	<p>In the UK Notified bodies will become <b>Approved Bodies</b> and will be appointed by the Secretary of State. All existing UK notified bodies will become approved bodies</p> <p>After <b>IP completion Day</b> EU Notified bodies lose their status as notified bodies in the UK. Their EC type approvals will no longer be recognised in the UK. New assessments at an UK Approved body will need to be conducted or arrangements to transfer the file and corresponding certificate from the EU Notified Body to an UK Approved Body need to be made. The transfer of the certificates needs to take place before the end of the <b>UK/EU Implementation Period</b></p> <p>In these cases, the notified body number (where required) would need to be updated on packaging</p> <p><b>EC Type Approval</b> will become <b>Type Approval</b> in the UK</p> <p>CE marked stock is still acceptable in the UK until 1<sup>st</sup> January 2022. Notified Body work related to this CE marked stock is still acceptable.</p>
<p><b>ACTION:</b> Companies using UK based EU Notified bodies will need to move to an EU based Notified Body</p> <p>This <u>only</u> affects products that are EC type approved, normal certification of products is not affected – any laboratories can be used as part of your compliance and testing</p>	<p><b>ACTION:</b> Companies using EU Notified Bodies work will need to use a UK Approved Body after <b>IP completion day</b>.</p> <p>This <u>only</u> affects products that are EC type approved, normal certification of products is not affected – any laboratories can be used as part of your compliance and testing</p>

## 4.8 Future Toy Safety Directive and UK Toy Regulation Changes

EU	UK
<p>Certain sections of the Toy Safety Directive are subject to change by the EU Commission.</p> <p>Appendix C, Appendix A, CMR’s, Fragrances and Heavy element limits are subject to frequent change</p>	<p>The same sections are subject to change in the UK Toy (Safety) Regulations. The Secretary of State is responsible for coordinating and approving these changes. A new Statutory Instrument is required for each change. The BTHA will monitor the situation and work with the UK Government to try to remain aligned on toy safety regulations</p>
<p><b>ACTION:</b> No action is required.</p>	

## 5 Northern Ireland

Due to the open border between Northern and Southern Ireland, Northern Ireland will be in a unique position after the end of the current Brexit transition period when the UK leaves the EU.

As a result, the UK Government has been working on a Northern Ireland (NI) protocol to lay out the particular steps that need to be taken. NI will in effect continue to follow EU law. A Statutory Instrument has been laid before Parliament to allow this to happen, whereby NI will continue to follow existing EU based law and the rest of Great Britain will follow the new post Brexit regulations. 280 EU legislative acts will ensure that NI is aligned with key elements of the EU's body of law including areas such as chemicals, food and machinery. EU measures on VAT and excise will also apply.

If you supply to GB only (not NI), then you only need follow GB requirements. If you supply to GB AND NI, you will need to follow GB requirements AND EU requirements.

There will be some key things to note:

- The UK Government has been clear that there should be no tariffs on internal UK trade; and that in any case, full use will be made of waivers and reimbursements to minimise the impact on business in any scenario.
- There will be new digital import declaration requirements to ensure this happens
- There will be a free GB to NI Trader Support Service
- Companies will need an Economic Operators Registration Identification (EORI) number
- The CE mark and related legislation will still be recognised for products
- Products that require and have been assessed by a UK Approved (notified) body after the end of the implementation period will require a new UK (NI) mark **in addition to the CE mark**. Such goods cannot be traded in the EU after delivery to NI.
- An EU address will be required for products sold in NI **or an NI address**

A UKNI mark needs to be added **only when all of the following conditions are met:**

- **you are placing toys (toys subject to CE marking) on the Northern Ireland market after the end of the implementation period**
- **your goods require mandatory third-party conformity assessment**
- **you use a UK approved body to carry out those conformity assessments from 1st January 2021**

**UKNI marked products cannot be placed on the EU market or when an EU Notified Body has carried out the assessment. The UKNI mark cannot be used on its own and must be accompanied by a CE mark or UKCA mark.**

**This means that the UKNI mark can only be used in Northern Ireland and therefore as the majority of companies will be selling in the UK and EU it will restrict stock movement. It is therefore preferable to avoid UKNI marking if possible by using a UK based Approved body for GB conformity assessment and an EU based Notified Body for EU and NI conformity assessment. Until the end of 2022, there is the option to affix the UKNI marking on a label affixed to the product or on an accompanying document.**

**From 1<sup>st</sup> Jan 2023 UKNI marking must, in most cases, be affixed directly to the product (the same as CE marking).**

**The size of the UKNI mark is the same as the UKCA mark (5mm minimum) and further details and artwork can be found here: <https://www.gov.uk/guidance/using-the-ukni-marking-from-1-january-2021>.**

**An EU DoC is used in NI. Acceptable manufacturer addresses in NI include EU addresses and NI addresses.**

**For NI based businesses selling goods to GB, either an NI or GB importer will need to be named. The products will also need a UKCA mark.**

## 6 Market Surveillance & enforcement notes

The EU's Safety Gate (RAPEX) recall and Information and Communication System on Market Surveillance System (ICSMS) will remain in operation across the EU. It is likely that in the event of an EU wide recall another method of informing the Safety Gate and ICSMS systems may be needed.

A UK based information exchange and recall system will be put in place which is intended to replace Safety Gate and ICSMS and its probable that information will be allowed to be submitted by Manufacturers and consumers.

Manufacturers will need to inform the UK Government and relevant EU member state governments separately of any recalls in the UK and EU respectively after **IP completion day**. The individual contact points for the UK and the member states will remain the same.

With regards to Ports and Borders, Border Intelligence is to be incorporated into the Office for Product Safety and Standards.

## 7 Tools and Resources from Government

**Individual product category guides including Toys can be found here:**

[Product safety and metrology from 1 January 2021: Great Britain](#)

**UK Transition website**

[https://www.gov.uk/transition?utm\\_campaign=transition\\_p1&utm\\_medium=organic&utm\\_source=ogd\\_dit\\_email&utm\\_content=ala\\_act0](https://www.gov.uk/transition?utm_campaign=transition_p1&utm_medium=organic&utm_source=ogd_dit_email&utm_content=ala_act0)

**Placing manufactured goods on the market in Great Britain from 1 January 2021**

<https://www.gov.uk/guidance/placing-manufactured-goods-on-the-market-in-great-britain-from-1-january-2021#legislation>

**Placing manufactured goods on the EU market from 1 January 2021**

<https://www.gov.uk/guidance/placing-manufactured-goods-on-the-eu-market-from-1-january-2021>

**Using the UKCA mark from 1 January 2021**

<https://www.gov.uk/guidance/using-the-ukca-mark-from-1-january-2021>

**Conformity assessment bodies: change of status from 1 January 2021**

<https://www.gov.uk/guidance/conformity-assessment-bodies-change-of-status-from-1-january-2021>

**Moving goods under the Northern Ireland Protocol**

<https://www.gov.uk/government/publications/moving-goods-under-the-northern-ireland-protocol>

<https://www.gov.uk/guidance/using-the-ukni-marking-from-1-january-2021>

[Product safety and metrology from 1 January 2021: Northern Ireland](#)

**Designated Standards**

[https://www.gov.uk/guidance/designated-standards?utm\\_source=5b86f61c-d046-447e-8509-3b255e216d8e&utm\\_medium=email&utm\\_campaign=govuk-notifications&utm\\_content=daily](https://www.gov.uk/guidance/designated-standards?utm_source=5b86f61c-d046-447e-8509-3b255e216d8e&utm_medium=email&utm_campaign=govuk-notifications&utm_content=daily)

## Appendix A - Product areas covered by the UKCA marking

EU Legislation	UK Legislation
Toy Safety - Directive 2009/48/EC	Toys (Safety) Regulations 2011
Recreational craft and personal watercraft - Directive 2013/53/EU	Recreational Craft Regulations 2017
Simple Pressure Vessels - Directive 2014/29/EU	Simple Pressure Vessels (Safety) Regulations 2016
Electromagnetic Compatibility - Directive 2014/30/EU	Electromagnetic Compatibility Regulations 2016
Low Voltage Directive 2014/35	Electrical Equipment (Safety) Regulations 2016
Non-automatic Weighing Instruments - Directive 2014/31/EU	Non-automatic Weighing Instruments Regulations 2016
Measuring Instruments - Directive 2014/32/EU	Measuring Instruments Regulations 2016
Lifts - Directive 2014/33/EU	Lifts Regulations 2016
ATEX - Directive 2014/34/EU	Equipment and Protective Systems Intended for use in Potentially Explosive Atmospheres Regulations 2016
Radio equipment - Directive 2014/53/EU	Radio Equipment Regulations 2017
Pressure equipment - Directive 2014/68/EU	Pressure Equipment (Safety) Regulations 2016
Personal protective equipment - Regulation (EU) 2016/425	Personal Protective Equipment Regulations (Regulation (EU) 2016/425 as brought into GB law and amended) and the Personal Protective Equipment (Enforcement) Regulations 2018
Gas appliances - Regulation (EU) 2016/426	Gas Appliances Regulation (Regulation (EU) 2016/426 as brought into GB law and amended) and the Gas Appliances (Enforcement) and Miscellaneous Amendment Regulations 2018
Machinery Directive 2006/42/EC	Supply of Machinery (Safety) Regulations 2008
Outdoor Noise Directive 2000/14/EC	Noise Emission in the Environment by Equipment for use Outdoors Regulations 2001
Directive 92/42/EEC hot-water boilers AND Ecodesign Directive 2009/125/EC	The Ecodesign for Energy-Related Products and Energy Information (Amendment) (EU Exit) Regulations 2019
Restriction of the Use of certain Hazardous Substances in Electrical and Electronic Equipment (RoHS) - Directive 2002/95/EC	The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012

For more details: <https://www.gov.uk/guidance/placing-manufactured-goods-on-the-market-in-great-britain-from-1-january-2021>