



TOYS and BREXIT – “No Deal”

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 Section 4.2.1 Section 4.6.1 Section 4.7

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 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 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 5th October 2020. As a reminder as always with such guidance, the document is 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 the UK and UK legislation will be used from **1st January 2021**. However, in some cases the UK will allow transition times for UK 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 the UK’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 UK 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 st January 2020	
UK/EU Implementation Period (IP)	Time for the UK and EU to negotiate and agree their future free trade agreement (FTA)	31 st 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 end day	UK requirements start	1 st 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 the UK 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 the UK 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 UK or EU market (manufactured and offered for sale) in the UK or in the EU before the end of the **UK/EU Implementation Period** can continue to be circulated without changes. New deliveries placed on the market after the **IP end 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. The first section 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 to an uncertain situation and are primarily aimed at UK 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
- Transit carton labels
- Pallet labels
- Declarations of Conformity even where links are supplied to electronic documents
- Websites

4.2.1 Barriers to achieving markings

There are a number of barriers to achieving the markings 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 1st September 2020 giving under 4 months until **IP end 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 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 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 1st 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 a **Comparison Summary of UK Government and BTHA Marking Recommendations – see next page.**

4.2.2 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 end day	Current rules apply (CE marking). UKCA may be used but no legal status	Agree
	IP end day - 31 st December 2021	CE mark accepted. UKCA mark can be legally be used. Can appear on packaging or leaflet Required immediately for UK Type approved products Existing CE marked stock, on the market before 31 st December 2020 can be sold through	Agree
	1 st January 2022 - 31 st December 2022	CE mark no longer accepted UKCA mark must be used. Can appear on packaging or leaflet	Agree <u>but may not be possible for some companies</u> The UK government have verbally confirmed that a “placed on the market protocol” will be applied to this date
	After 1 st 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> Whilst not confirmed it is very likely that a “placed on the market protocol” will be applied to this date
Manufacturer Address	Now – IP end day	Current rules apply (UK or EU address)	Agree
	After 1 st January 2021	UK address required on product/packaging/instructions according to specific legislation EU addresses can only be used with a UK based importer or Authorised Representative address	BTHA advise that for CE marked stock (acceptable for products placed on the market until 31 st December 2021) EU addresses can continue to be used. Where the UKCA mark is used, we would recommend adding a UK address According to the Toy Safety Regulation the address is required on the product or if not possible on the 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>
Authorised Representative address	Now – IP end day	No advice	Current rules apply
	After 1 st January 2021	No advice	CE marked stock (acceptable for products placed on the market until 31 st December 2021) EU addresses can continue to be used. Where the UKCA mark is used, we would recommend adding a UK address For toys the AR address is not required on the product but is appropriate on the packaging or instructions

			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>
Importer address (n/a if the Manufacturer or AR UK address appears)	Now – IP end day	Current rules apply (first importer into the EU where the manufacturer is based outside the EU should be named where appropriate)	Agree
	IP end day – 31 st December 2022	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	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
	After 31 st December 2022	On the product	In most cases the importer address for toys is permitted to be on the packaging and not the product. <u>In our opinion importers addresses will only be added to packaging of toys, even if other legislation applies.</u> Whilst not confirmed it is very likely that a “placed on the market protocol” will be applied to this date

Note: Accompanying information = instructions, leaflet, document accompanying the toy or packaging

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 end 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
 <p>CE Marking rules will remain for all Toys sold in the EU</p>	 <p>UKCA marking will be required on any toy, to an affixed label or to the packaging placed on the UK market. The mark must be a least 5mm in height and must be easily visible, legible and permanent (meaning indelible)</p> <p>CE marked goods will still be acceptable until 1st January 2022</p> <p>Until 1st January 2023, for most goods (other than those subject to special rules) you have the option to affix the UKCA marking on a label affixed to the</p>

	<p>product or a document accompanying the toy or packaging</p> <p>Existing CE marked goods, on the market before 31st December 2020 can be sold through</p> <p>See further guidance on UKCA marking below</p>
<p>ACTION:</p> <p>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>ACTION:</p> <p>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 1st 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 end 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 in the meantime.

3. Are there situations when the UKCA mark must be applied immediately after IP end 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.

4. The UK Government guidance states that CE marked goods can be distributed until 1st January 2022, is this our standard products we use now?

Whilst not explicitly mentioned in any guidance it is sensible that the current CE marked product can be used. This would include products bearing EU addresses and supplied with an EU declaration of conformity, where required by individual directives. UK Government advice states that this is possible whilst EU and UK laws remain the same which, whilst not confirmed, is likely until 1st January 2022 and it would be reasonable to conclude would still apply if the product continued to meet both UK and EU rules.

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 Toy Safety Regulations and 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 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 1st January 2022 and 1st 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 implantation 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 UK(NI) mark for circulation there as well. Any stock with a UK(NI) mark cannot go on to be circulated within the EU. Alternatively, and more sensibly, stock marked with both the UKCA and the CE mark can circulate freely in Northern Ireland.

4.2.5 Address Markings

The market on which the product is placed determines the address requirements. A UK address will no longer be part of 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 IP end day 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>See further guidance on address marking below</p>
<p>ACTION: Any companies without an EU address will need to ensure one is added for stock placed on the market in the EU after IP end day</p> <p>UK companies that distribute other brands to the EU will need to ensure EU addresses have been added to the products</p>	<p>ACTION: Any companies without a UK address will need to ensure one is added for stock placed on the market in the UK after IP end day</p> <p>However, it should be noted that CE marked stock will be accepted until 1st January 2022 (see section 4.2.3 Conformity marking) and it can be assumed that this stock will not need a UK address. Once the UKCA mark is applied, a UK address should be used at the same time</p>

4.2.6 BTHA Questions and Answers – Addresses

UK Government Guidance – published on 1st 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 1st 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 end 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 end 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 end 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 end day**. The address can be on accompanying documentation (and not the product, see definition in section 4.2) until 31st December 2022 and on the product where relevant after 31st 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 end day** since (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 end 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.
- 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. 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 end 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.

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 UK 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.

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 exit 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

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 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>Toy Safety Directive 2009/48/EC</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>UK Toys (Safety) Regulations 2011 No. 1881</p> <p>After IP end day 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 IP end day and the revised UK Regulations apply to Toys placed on the market in the UK after IP end day</p> <p>A full list of UK Regulations verses EU Directives is published on the BTHA website for members</p>
<p>ACTION:</p> <p>On IP end day no changes are required to continue to meet the EU Toy Safety Directive</p>	<p>ACTION:</p> <p>On IP end day 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</p>

establishing the conformity of products and will need to be used on UK technical documentation Final amendments to the UK Regulations will be made as we approach IP end day

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 end day** may or may not be included in the UK Regulations.

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

As before BREXIT goods will have to be placed on the market in the EU to get recognition of their legal status

After BREXIT there is no recognition of goods placed on the market in the UK

UK

After **IP end day** goods will have to be placed on the market in the UK to get recognition of their legal status by UK Enforcement

After BREXIT there is no recognition of goods placed on the market in the EU

Goods already placed on the UK or EU market by **IP end day** will be able to continue to circulate in, and between, the UK and the EU see section 4.1

ACTION: 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

4.4.1 Definition of Placing on the market

EU Blue Book – 26th 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) placed on the market is at the point where ownership transfers. In most cases this is at the point the products are delivered to the ship for shipment.
3. Where a product is manufactured and put into stocks and then offered for sale, e.g. in a trade catalogue, it is placed on the market when the offer is placed 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 7th 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	UK
<p>Referenced harmonised standards are those that give a presumption of conformity with the requirements of the Toy Safety Directive.</p> <p>The list of harmonised standards published in the Official Journal apply.</p> <p>Standards are developed in the EU by European development committees such as CEN and CENELEC of which the UK’s BSI is a member</p>	<p>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 end day</p> <p>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 1st July 2020 which affects some voting rights</p> <p>At least until the end of 2021, BSI experts will still be entitled to participate in CEN and CENELEC technical committees</p> <p>BSI membership of ETSI is not affected</p>
<p>ACTION: No action is required for EU trading and current testing will be the same</p>	<p>ACTION: No action is required at this stage and existing tests to EN standards will continue to be acceptable</p>

4.6 Declaration of Conformity (DoC)

EU	UK
The EU DoC will continue be required for circulation in EU countries.	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
ACTION: Existing DoC's can be used	ACTION: UK DoC's will be required for UKCA marked stock

4.6.1 UK DOC

The UK DoC should include:

- A unique identification of the toy(s) (An item, model or SKU number)
- Name and address of the manufacturer or the manufacturer's authorised representative
- A statement that "This declaration of conformity is issued under the sole responsibility of the manufacturer"
- Identify the 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.
- A list of the relevant UK legislation with which the product complies (e.g. The Toy Safety Regulations 2011 (amended))
- References to the relevant UK designated standards used, or references to the specifications in relation to which conformity is declared (e.g. BS EN 71-3: 2019)
- Where applicable, the details of the approved body that carried out the conformity assessment (UK Type approval)
- Additional information, such other UK regulations or standards that have been used.

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>Notified bodies 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 IP end Day UK Notified bodies lose their status as notified bodies in the EU. Their EC type approvals will no longer be recognised in the EU.</p>	<p>In the UK Notified bodies will become Approved Bodies and will be appointed by the Secretary of State. All existing UK notified bodies will become approved bodies</p> <p>After IP end Day 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</p>

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 **UK/EU Implementation Period**

In these cases, the notified body number (where required) would need to be updated on packaging

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 **UK/EU Implementation Period**

In these cases, the notified body number (where required) would need to be updated on packaging

EC Type Approval will become **Type Approval** in the UK

ACTION: Companies using UK based EU Notified bodies will need to move to an EU based Notified Body

This only 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

ACTION: Companies using EU Notified Bodies work will need to use a UK Approved Body after **IP end day**.

This only 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

4.8 Future Toy Safety Directive and UK Toy Regulation Changes

EU

Certain sections of the Toy Safety Directive are subject to change by the EU Commission.

Appendix C, Appendix A, CMR's, Fragrances and Heavy element limits are subject to frequent change

UK

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

ACTION: No action is required.

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. Such goods cannot be traded in the EU after delivery to NI. NI mark guidance is yet to be published
- An EU address will be required for products sold in NI

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 ICSM 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 government separately of any recalls in the UK and EU respectively after **IP end 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 of Product Safety and Standards.

7 Tools and Resources from Government

UK Transition website

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>

UK Government Guidance – published on 1st September 2020 - Extract

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

Appendix A - Product areas covered by the UKCA marking

Product areas covered by the UKCA marking

- Toy safety
- Recreational craft and personal watercraft
- Simple pressure vessels
- Electromagnetic compatibility
- Non-automatic weighing instruments
- Measuring instruments
- Lifts
- ATEX
- Radio equipment
- Pressure equipment
- Personal protective equipment
- Gas appliances
- Machinery
- Outdoor noise
- Ecodesign
- Aerosols
- Low voltage electrical equipment
- Restriction of hazardous substance

Appendix B - Questions asked of Government

The BTHA has asked the UK Government to:

- Agreement on a pragmatic application of addresses laid out in our guide above. We have advised them that the BTHA will be advising members on this approach given they have three months to comply and cannot satisfy the government guidance in the time now available.
- For a transition for all product, packaging and instructional modifications to match UKCA marking, at a minimum
- For agreement on the interpretation of primary precedence of sector specific legislation, i.e. the marking of economic operator details, placing on the market/transitional arrangements and interpretation of the toys regulation.

In addition, the following questions have been sent:

Question 1

Can an AR appointed before Brexit continue to serve after Brexit?

The Toy Safety Regulations as amended by The Product Safety and Metrology etc. (Amendment etc.) describes an authorised representative as *a person who—(i)immediately before IP end day was established in the United Kingdom or an EEA state and was appointed by a manufacturer by written mandate to perform specified tasks for that manufacturer, in accordance with regulation 25, as it had effect immediately before IP end day; and (ii)on or after IP end day continues to be so established and appointed by the manufacturer to perform those tasks.*

Does that mean an authorised representative based in the EU appointed before IP end day can continue to function as an AR after IP end day? Equally, does it mean that a UK based AR can continue to function as such in the EU after IP end day?

Question 2

Allowance in guidance is for UK distributors who become importers. Does it apply to other types of importer?

UK distributors that become importers have until 31st December 2022 to add their name to the product, where required to do so. Can we assume this applies to all types of importer, not just those that were once distributors?

Question 3

What does imported from EEA state mean?

In the TSR, Regulation 27, 2, a), iii) gives an allowance for when: the importer imported the toy from an EEA state and places it on the market within the period of 18 months beginning with IP end day. Does this mean a) it is physically from an EEA state, b) it originates from an EEA state or c) it is labelled with an economic operator address based in an EEA state.

Question 4

Status of NI based operators

Are products bearing an only NI address allowed to be placed on the UK market?

Question 5

Will the regulations be updated to reflect the guidance and when?

So far, many of the allowances for importers addresses and all of the allowances for the UKCA mark appear in guidance only. Will the regulations be updated to reflect this?

Question 6

Can companies “over label” in the UK?

If we want to ship products into UK which do not have the UKCA mark /importer address, can we over-label at our UK DC, or will it be stopped at the border? Thus need it be compliant upon arrival? Products shipped from plants in Asia are bonded and will arrive in a bonded warehouse. Products shipped from DC's in Europe are free goods and will be regarded as being brought onto the market the moment it arrives at the border. How will customs handle these two situations?

Question 7

What about GPSR?

GPSR: <https://www.legislation.gov.uk/uksi/2005/1803/regulation/7/made>

This latest set of guidance gives welcome allowance for certain products covered by New Approach style legislation. We wonder if the same allowances can be given to products under any “old approach” regulation and specifically the General Product Safety Regulations? Without this allowance, products under the GPSR require a Producer address update immediately after IP end day.

Question 8

The metrology regulation has been amended no less than 5 times and is set for further important modification. How can companies be expected to comply with a law on the day it comes into force when there is no readable consolidated version of it? When will you release an advance publication for comment and to assist compliance?

Question 9

In a Goods Regulation Working Group meeting on 30th October it was stated that companies should have been able to comply as certain issues would still exist after deal, these were described as “deal neutral” items. At no time were we aware that there were deal neutral items if we had this would have made our advice much easier to give. Whilst it is too late now can you confirm all deal neutral items?

Question 10

Can you confirm if EU notified bodies work can still be accepted until 1st January 2022?

Question 11

Can you confirm what address protocol on products is acceptable in NI. Is a CE marked product with an EU address acceptable? Is a UKCA marked product with a UK address acceptable? Do we need to add NI importer details?

Question 12

Will there be WTO notification? We have already asked but the answer was “the UK will fulfil its obligations”, not “yes or no”.

Since it represents a significant change to product legislation, will the changes in The Product Safety and Metrology etc. regulations be notified to the WTO TBT process?

Question 13

Will UK transition dates apply to products paced on the market?

Will the end of the allowance periods (e.g. end of 2021 and end of 2022) recognise products placed on the market as already compliant?

Question 14

The following are changes added by the EU since the UK Regulations were written, will these be added before IP end day?

Limit values (published in EN71-3):

Chromium VI (Cr(VI)) - Limit for category III materials lowered to 0.053mg/kg by Directive (EU) 2018/725. In force 18th November 2019. This change is **not** included in Schedule 15 of The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019.

Aluminium - There are reduced limits for aluminium that come into force on 20th May 2021. Directive (EU) 2019/1922. Limits are 2250 mg/kg (Cat I), 560 mg/kg (Cat II), 28130 mg/kg (Cat III)

Appendix C: Formaldehyde

New limits in App C. Amending Directive 2019/1929/EU. Into force 21st May 2021

- 1,5 mg/l (migration limit) in polymeric toy material
- 0,1 ml/m³ (emission limit) in resin-bonded wood toy material
- 30 mg/kg (content limit) in textile toy material
- 30 mg/kg (content limit) in leather toy material
- 30 mg/kg (content limit) in paper toy material
- 10 mg/kg (content limit) in water-based toy material

Fragrances

Two amending Directives are due for vote soon to add to the lists of banned fragrances and those are required to be labelled.

Titanium Dioxide

The classification of TiO₂ has changed in the CLP regulations which the UK will follow. This affects this substances acceptability in toys. In the EU we will be supporting an Appendix A submission. In the UK I assume a similar submission will need to be submitted to someone who maybe as yet is unaware they will receive one! It would be good to know how this will be handled in the UK and what we would need to do.

Question 15

We found a document - TOYS (SAFETY) REGULATIONS 2011 as amended by the Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019. Comments from our team were submitted as it contained a number of errors. Will this document be published and will it be more like the EU guidance documents published?

Please note that for the initial publication of the UK Regulations no BEIS guidance was published and companies were referred to BTHA guidance. Could this happen again?