UK Approved Bodies clarify key questions on the UKCA mark and processes

One way we the FIA have attempted to tackle the multifaceted issue of UKCA is to engage with the UK Approval Bodies (UK AB). In our latest meeting (26/02/21) with the majority of the relevant UK ABs, we asked key questions that were answered clearly and provided much needed clarity on the UKCA mark alongside the processes required to affix the mark.

We hope that this document should serve as a summary of that meeting and we hope it can allow the fire industry to make more progress in being able to affix the UKCA marking. This document has been made in collaboration with a well-informed UK Approved Body who have tried to answer the questions that have been put forth by FIA members.

For any comments or questions please contact Adam Richardson, FIA Business Liaison on arichardson@fia.uk.com

What products can put a UKCA mark on right now and how do they do this?

All product under AVCP system 4 can be UKCA marked now. This is the same process as used for CE marking. There is no involvement of a notified body, if the manufacturer has the required evidence to demonstrate they meet ALL relevant parts of the UK regulations then they can affix the UKCA to their product.

All product under system 3 with ITT reports from a former UK NB or UK AB can affix the UKCA mark.Product covered by system 2+, 1 and 1+ must have either a former UK NB certificate or an AB certificate in addition to meeting all the relevant requirements of the UK CPR. Products supported by only EU27 NB documents do not meet the UK CA requirements and cannot carry the UKCA marking.

Have you as a business in the fire industry had your CE marks that were issued by the former notified body certificate from the UK already transferred? Let us know by emailing arichardson@fia.uk.com

What happens to certificates for products that were moved from a UK Notified Body to an EU Notified Body before Jan 1st 2021?

The original issuer of a certificate is not relevant. The present issuer of a certificate must be taken into account.

Transferring a Certificate from a EU27 NB to a UK AB

The transfer process is effectively identical to the issuance of a new certificate, see Process for the issuance of a UKCA certificate – CPR AVCP System 1 and 1+.

To allow a smooth transfer or issuance of a new certificate the required information is best presented in electronic form, PDF's work well. Some information will come from the manufacturer and other evidence direct from the 'other' notified body. An agreement that allows the two bodies to share information is required. If the 'previous' and or 'other' body is to continue to provide the ongoing surveillance then a subcontract agreement is required.

Why can't the UK AB's all collectively state what their process will be?

The processes and requirements are covered, in part, by the regulation and by position papers, however the UK ABs are working with the Government to create the UK Group of Approved Bodies (UKGAB) that will elect a chair and create a common policy document that will be mandatory. The group is likely to be set up within the next few months and aims to produce relevant document towards the end of the summer.

Many manufacturers have already gained UKCA certificates by approaching UK AB's. The AB's are confident that the work to issue the required number of certificates can be completed before the 2022 deadline but the industry remains less sure. The AB's will be unable to provide the service if all manufacturers delay toward the deadline.

The FIA will continue to lobby the UK government for an extension, but it would be wise for business to plan for no extension and hope for a further 12 months.

Is there any way that other UK ABs can informally agree to all work with the same processes on the UKCA mark?

It's important that all NBs (ABs) are in agreement with the interpretation of these rules so that there is no scope for divergence of approach between the AB's.

The work of the UK Group of Approved Bodies (GAB) in providing a clear set of mandatory guidance is very important. This group is being formed and will probably meet in early May. It needs the guidance and support of a very good technical secretary something the UK government needs to support.

How will UK ABs get through the vast number of certificates that need transferring within the remaining months?

Many of the certificates cover a range of products, for transfers from EU27 NB to UK AB where the two separate legal entities are part of the same group, a simple application request will result in a painless transfer or additional certificate.

The industry has yet to quantify the number of certificates issued by EU NB's that do not have bodies in both the UK and EU, so the size of the problem is not fully known.

Across the CPR there will be an estimate 12000 certificates and the AB's are confident that these will be issued before the deadline, assuming manufacturers do not delay. The industry and the AB's have been aware of the deadline for over 12 months.

What qualifies as a legitimate Factory Control Report audit, due to the ongoing pandemic these have been virtual audits, would that count?

Surveillance visits carried out using virtual or remote auditing techniques are allowed. Initial assessments can also be conducted using these methods although a physical visit should be conducted where possible.

If businesses cannot transfer all the products, what will happen to existing systems if the manufacturers do not UKCA their products, leaving systems unable to be maintained and needed to be fully replaced?

This situation already exists in the EU. Product that was supported by a former UK NB certificate that has not been transferred to an EU NB can no longer be placed on the EU market. The same situation will occur in the GB market. It is therefore imperative that the industry takes all steps immediately to obtain the required UKCA certificates.

Article 43

Requirements for notified bodies

1. For the purposes of notification, a notified body shall meet the requirements set out in paragraphs 2 to 11.

2. A notified body shall be established under national law and have legal personality.

3. A notified body shall be a third-party body independent from the organisation or the construction product it assesses.

A body belonging to a business association or professional federation representing undertakings involved in the design, manufacturing, provision, assembly, use or maintenance of construction products which it assesses, can on condition that its independence and the absence of any conflict of interest are demonstrated, be considered to be such a body.

4. A notified body, its top-level management and the personnel responsible for carrying out the third party tasks in the process of assessment and verification of constancy of performance shall not be the designer, manufacturer, supplier, installer, purchaser, owner, user or maintainer of the construction products which it assesses, nor the authorised representative of any of those parties. This shall not preclude the use of assessed products that are necessary for the operations of the notified body or the use of products for personal purposes.

A notified body, its top-level management and the personnel responsible for carrying out the third party tasks in the process of assessment and verification of constancy of performance shall not become directly involved in the design, manufacture or construction, marketing, installation, use or maintenance of those construction products, nor represent the parties engaged in those activities. They shall not engage in any activity that may conflict with their independence of judgement and integrity related to the activities for which they have been notified. This shall, in particular, apply to consultancy services.

A notified body shall ensure that activities of its subsidiaries or subcontractors do not affect the confidentiality, objectivity and impartiality of its assessment and/or verification activities.

5. A notified body and its personnel shall carry out the third party tasks in the process of assessment and verification of constancy of performance with the highest degree of professional integrity and requisite technical competence in the specific field and must be free from all pressures and inducements, particularly financial, which might influence their judgement or the results of their assessment and/or verification activities, especially from persons or groups of persons with an interest in the results of those activities.

6. A notified body shall be capable of carrying out all the third party tasks in the process of assessment and verification of constancy of performance assigned to it in accordance with Annex V in relation to which it has been notified, whether those tasks are carried out by the notified body itself or on its behalf and under its responsibility.

At all times and for each system of assessment and verification of constancy of performance and for each kind or category of construction products, essential characteristics and tasks in relation to which it has been notified, the notified body shall have the following at its disposal:

(a) the necessary personnel with technical knowledge and sufficient and appropriate experience to perform the third party tasks in the process of assessment and verification of constancy of performance;

(b) the necessary description of procedures according to which the assessment of performance is carried out, ensuring the transparency and the ability of reproduction of these procedures; it shall have appropriate policies and procedures in place that distinguish between the tasks it carries out as a notified body and other activities;

(c) the necessary procedures to perform its activities which take due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of the product technology in question and the mass or serial nature of the production process.

A notified body shall have the means necessary to perform the technical and administrative tasks connected with the activities for which it is notified in an appropriate manner and shall have access to all necessary equipment or facilities.

7. The personnel responsible for carrying out the activities in relation to which the body has been notified, shall have the following:

(a) sound technical and vocational training covering all the third party tasks in the process of assessment and verification of constancy of performance within the relevant scope for which the body has been notified;

(b) satisfactory knowledge of the requirements of the assessments and verifications they carry out and adequate authority to carry out such operations;

(c) appropriate knowledge and understanding of the applicable harmonised standards and of the relevant provisions of the Regulation;

(d) the ability required to draw up the certificates, records and reports to demonstrate that the assessments and the verifications have been carried out.

8. The impartiality of the notified body, its top-level management and assessment personnel shall be guaranteed.

The remuneration of the notified body's top-level management and assessment personnel shall not depend on the number of assessments carried out or on the results of such assessments.

9. A notified body shall take out liability insurance unless liability is assumed by the Member State in accordance with national law, or the Member State itself is directly responsible for the assessment and/or the verification performed.

10. The personnel of the notified body shall be bound to observe professional secrecy with regard to all information gained in carrying out its tasks under Annex V, except in relation to the competent administrative authorities of the Member State in which its activities are carried out. Proprietary rights shall be protected.

11. A notified body shall participate in, or ensure that its assessment personnel is informed of, the relevant standardisation activities and the activities of the notified body coordination group established under this Regulation and shall apply as general guidance the administrative decisions and documents produced as a work result of that group.

Article 52

Operational obligations for notified bodies

1. Notified bodies shall carry out third party tasks in accordance with the systems of assessment and verification of constancy of performance provided for in Annex V.

2. Assessments and verifications of constancy of performance shall be carried out with transparency as regards the manufacturer, and in a proportionate manner, avoiding an unnecessary burden for economic operators. The notified bodies shall perform their activities taking due account of the size of the undertaking, the sector in which the undertaking operates, its structure, the degree of complexity of the product technology in question and the mass or serial nature of the production process.

In so doing, the notified bodies shall nevertheless respect the degree of rigour required for the product by this Regulation and the part played by the product for the fulfilment of all basic requirements for construction works.

3. Where, in the course of the initial inspection of the manufacturing plant and of factory production control, a notified body finds that the manufacturer has not ensured the constancy of performance of the manufactured product, it shall require the manufacturer to take appropriate corrective measures and shall not issue a certificate.

4. Where, in the course of the monitoring activity aiming at the verification of the constancy of performance of the manufactured product, a notified body finds that a construction product no longer has the same performance to that of the product-type, it shall require the manufacturer to take appropriate corrective measures and shall suspend or withdraw its certificate if necessary.

5. Where corrective measures are not taken or do not have the required effect, the notified body shall restrict, suspend or withdraw any certificates, as appropriate.

As UK and EU essential requirements are currently the same, the FIA encourage UK AB's to consider alternatives including reviewing existing documentation and/or performing targeted activities to verify conformity assessment results carried out previously by an EU CAB where a review of available documentation is not sufficient to provide confidence in the product's conformity.

For businesses placing CE marked product on the EU market. Questions on needing to have an "Economic Operator" within the EU, which could be the Importer or an Authorised Representative.

Another option would be to have a Company X Europe Ltd Office address within the EU and we have a few questions as follows:

In all cases the manufacturer, as defined by the regulation, must be the body to whom the certificate has been issued. There are no exceptions. The manufacturer is defined as

19. 'manufacturer' means any natural or legal person who manufactures a construction product or who has such a product designed or manufactured, and markets that product under his name or trademark;

Certificates can not be issued to a distributor or importer.

1. Could this office just be an additional address under our Legal Company X Europe Ltd?

Contact a lawyer

2. Would the office need to be manned all the time?

Contact a lawyer

3. Could the office address simply be added our product documentation, so we have a UK & EU address?

Contact a lawyer

Do the approval bodies agree that the below categories are correct?

The following Categories describe the intended destination for the product, the AVCP system and the certificate issuing body. The validity of the certificate for the market, timing and a short explanation is included. The first group of categories are applicable to AVCP system 1 and 1+.

Category A
Product for the GB market only. AVCP System 1 and 1+.
The CE CoP CPR-certificate was issued by a former UK NB.

Most former UK NB's became UK AB on 1.1.21 and lost their EU NB status.
The CE CoP CPR-certificate remains valid under the UK CPR and may be used to support UKCA marking if the UK AB has not withdrawn the certificate. However, the certificate became invalid for CE marking on 01.01.2021. Most certificates have been replaced with a UKCA certificate issued by the UK AB.

Category B
Product for the GB market only. AVCP System 1 and 1+
The CE CoP CPR-certificate was issued by an EU27 NB.

The EU Notified Body certificate continues to be valid for CE marking. Product with the CE mark can be placed on the GB market up to the end of 2021.
From the 1 Jan 2022 the CE mark will not be recognised and the UKCA mark must be used.

Category C
Product for the EU market. AVCP System 1 and 1+.
The CE CoP CPR-certificate was issued by a former UK NB.

All CE certificates issued by former UK NB's became invalid on the 1st Jan 2021 and can no longer be used to support CE marking. New certificates from an EU27 NB must be obtained before placing the product on the EU market.

Category D
Product for the EU market. AVCP System 1 and 1+.
The CE CoP CPR-certificate was issued by a EU27 NB.

All CE certificates issued by EU27 NB's continue to be valid. If the certificate is maintained, then product can continue to be placed on the EU market.

Category E

Product for both the EU and GB markets. AVCP System 1 and 1+.
The CE CoP CPR-certificate was issued by a former UK NB.

The former UK NB certificate will allow the product to be placed on the UK market but does not support CE marking so the product cannot be placed on the EU or NI market. The original former UK NB certificate will be replaced with a UKCA certificate. A new EU27 NB certificate is required before the product can be placed on the EU market.

Category F

Product for both the EU and GB markets. AVCP System 1 and 1+.
The CE CoP CPR-certificate was issued by a EU 27 NB.

The EU27 NB certificate continues to support CE marking and the product can be placed on both markets until the end of 2021. In 2022 the product can be placed on the EU market but not on the GB market. A certificate from a UK AB to support UKCA marking is required to place the product on the GB market.

Product for the Northern Ireland Market:

Product to be placed on the market in Northern Ireland must carry either the CE marking supported by a CE certificate issued by an EU27 NB or carry the CE UKNI marking supported by a UKNI certificate issued by a UK AB. The UKCA mark is not valid in Northern Ireland.

Process for the issuance of a UKCA certificate – CPR AVCP System 1 and 1+:

Where a former UK NB has been recognised as a UK AB (see link to .gov below) a UKCA CoP certificate based on the bodies previous CE certificate can be issued from the 1 Jan 2021. In many cases this has already occurred and the product will now carrying the UKCA mark. The old CE marking is no longer supported by these certificates and product can no longer be marked with the CE mark and therefore should not be placed on the EU market.

Where the product has a EU27 NB issued certificate and the manufacturer wishes to affix the UKCA marking a UKCA certificate is required. The manufacture will contract with the UK AB for this service. The UK AB can take into consideration documents and supporting evidence and will request at least:

I. the Initial Type Test report for the product (assessment of performance);
II. evidence to demonstrate the ITT reports is representative of present production;
III. initial inspection report covering the manufacturing plant and factory production control;
IV. continuing surveillance, assessment and evaluation of factory production control reports
V. evidence to demonstrate the effective implementation of any required corrective action.

A file review will be conducted. Some AB's might wish to complete a visit to the production facilities (possibility remotely) before issuing the certificate. The AB takes full responsibility for the certificate they issue and will take the steps required to satisfy themselves the requirements have been met.

The continued surveillance must be caried out by the UK AB or in some cases a subcontractor who meets the competency and obligations of a UK AB. This includes a detailed understanding of the UK regulation. For new applications, the AB will require evidence relating to the initial inspection and assessment of the manufacturing facilities and is likely to conduct the ongoing surveillance to confirm the production facilities and required FPC meet the UK requirements.

This second group of categories is applicable to AVCP system 3:

Category G
Product for the GB market only. AVCP System 3.
The Initial type test evidence was provided by a former UK NB.

The evidence remains valid and the UKCA mark can be affixed based on this evidence.

Category H
Product for the GB market only. AVCP System 3.
The Initial type test evidence was provided by an EU27 NB.

The EU Notified Body Initial type test evidence continues to be valid for CE marking. Product with the CE mark can be placed on the GB market up to the end of 2021.
From the 1 Jan 2022 the CE mark will not be recognised and the Initial type test evidence provided by the EU27 NB will not be valid evidence to support the UKCA mark. Retesting of the product by a UK AB will be required.

Category I
Product for the EU and NI market. AVCP System 3.
The Initial type test evidence was provided by a former UK NB.

All Initial type test evidence issued by former UK NB's became invalid on the 1st Jan 2021 and can no longer be used to support CE marking. The product must be fully retested by an EU27 NB before the product can be placed on the EU or NI market.

Category J
Product for the EU and NI market. AVCP System 3.
The Initial type test evidence was provided by an EU27 NB.

All Initial type test evidence issued by EU27 NB's continues to be valid for CE marking and product can continue to be placed on the EU and NI market.

Category K

Product for the EU, NI and GB markets. AVCP System 3.
The Initial type test evidence was provided by a former UK NB.

The former UK NB Initial type test evidence can be used to support the affixing of the UKCA mark but not the CE mark. To place product on the EU and NI market the product must be retested by a EU27 NB.

Category L

Product for both the EU, NI and GB markets. AVCP System 3.
The Initial type test evidence was provided by an EU27 NB.

The Initial Type Test evidence can be used to support CE marking and product can be placed on both markets for the remainder of 2021. Product can continue to be placed on the EU and NI markets after 2021 but not the GB market as the CE mark will no longer be recognised and the evidence provided by the EU27 NB is not valid for UKCA marking.

Process for the issuance of a UKCA test reports – CPR AVCP System 3

At present it is not possible under the activities of a UK AB and the requirements of ISO 17025 for a test laboratory to take the work of another body and re-issue the report. The European commission are of the view that all testing carried out by former UK Notified Bodies is no longer valid evidence to support CE marking and retesting of the product is required.

The UK government and AB's are discussing potential solutions and recognise that any alternative solution for the UKCA mark might be more beneficial to manufacturers who have used an EU27 NB and might disadvantage manufacturers who have used former UK NB's.

The full retesting of product under AVCP system 3 appears to be the way forward.

Approved Body and Notified Body obligations

It is the responsibility of individual UK ABs to assure themselves that products for which they are issuing certificates are compliant with the relevant requirements. However, it is not necessarily required to retest a product where suitable evidence of performance is available.

The obligations on AB and NB is detailed in the regulation (see the attached annex A), under the CPR Article 52 the operational obligations for the notified bodies clause 2 the following statement appears;

Article 52

Operational obligations for notified bodies

2. Assessments and verifications of constancy of performance shall be carried out with transparency as regards the manufacturer, and in a proportionate manner, avoiding an unnecessary burden for economic operators. The notified bodies shall perform their activities taking due account of the size of the undertaking, the sector in which the undertaking operates, its structure, the degree of complexity of the product technology in question and the mass or serial nature of the production process.

In so doing, the notified bodies shall nevertheless respect the degree of rigour required for the product by this Regulation and the part played by the product for the fulfilment of all basic requirements for construction works.

As UK and EU essential requirements are currently the same, the FIA encourage UK ABs to consider alternatives including reviewing existing documentation and/or performing targeted activities to verify conformity assessment results carried out previously by an EU NB's where a review of available documentation is not sufficient to provide confidence in the product's conformity.

Can a cross listed company that has the CPR listed product through a UK approved body or know that the CPR listing meets all the relevant criteria apply the UKCA mark?

We need to move away from the thought of a cross linked company and think about the legal entity that is placing the product on the market under their own name or trade mark and what they are required to do and have in place. This legal entity, the manufacturer according to the CPR, needs to have the same documents regardless of who makes the product.

Under AVCP 1, 1+ and 2+ they must have a certificate issued to them and under system 3 they must have ITT reports issued to them. If the manufacture subcontracts the production and or design then the NB must visit all locations that provide significant steps in the production process.

These locations could be visited by one or more approved bodies for one or more manufacturers, these visits will cover the 'producers' range of product as well as many different products but the only items that the 'producer' places on the market (under their own name or trade mark) can be listed on the 'producer' certificate

However, if the cross listed company is unsure, they have to start the process of engaging with a UK approved body to get the permission to apply the UKCA mark.

NO Approved Bodies never give permission, it is the full responsibility of the manufacturer, the certificate or test report only covers one element of the regulations, a manufacturer must meet all relevant parts of the regulation.

If the UK body has had no previous knowledge with the sub-contracted manufacturer nor do they recognise the European notified body then their due diligence on the paperwork could be time consuming and costly. In all cases the AB must carry out the fully certification process, ensure all the relevant evidence and tasks according to the AVCP are present and or have been carried out and then make a certification recommendation followed by certification decision.

This process is easier if the sub-contracted producer is already visited by the AB. In some cases, the AB can subcontract the visits to another body such as an EU NB. This could result in a single visit to a producer providing FPC compliance evidence for a wide range of products. Full legal agreements between the various parties are required.

The agreed timescales and costs need to also broaden out to cross listed products as well as known UK manufacturers.

It is up to each manufacturer to contact the AB and obtain a quotation.

I cannot see whether this is addressed in your document. It might be easier to put a definition/statement that where you read original manufacturer this also needs to include all the companies who have cross-listed certified products being sold in the UK which are either of UK manufacture, European manufacture or I guess even outside the EEA if they are being sold in the UK. If a company has sole distribution rights for the UK this is also affected. (side issue – but shows how much wider it is rather than just thinking about UK manufacturers)

The only product that can be listed on a certificate are those placed on the market by the manufacturer. If a company markets the product under their own name or trademark then they are the manufacturer. A certificate cannot list a product place on the market by someone else.

Can the original manufacturer have listed or cross listed products within the certification?

No. Only one type of organisation needs and can have a certificate, that is the legal entity that places the product on the market under their name or trade make, they are the manufacturer.

Hope this makes sense. Simply put cross listed companies are in the same position as the original manufacturer but with less control. There is no such thing as a cross linked company. There are producers and manufacturers. If you place the product

on the market under your own name or trademark you are a manufacturer. If you sell someone else's product then you are a distributor. If you bring in a product from outside the UK you are an importer. You can be an importer and a manufacturer

Sources:

UK conformity assessment - GOV.UK (www.gov.uk)

Placing manufactured goods on the market in Great Britain - GOV.UK (www.gov.uk)

Placing manufactured goods on the market in Northern Ireland - GOV.UK (www.gov.uk)

Using the UKCA marking - GOV.UK (www.gov.uk)

Designated standards - GOV.UK (www.gov.uk)

UK Market Conformity Assessment Bodies - GOV.UK (www.gov.uk)

UKCA's Example: UKCA Mark | BSI (bsigroup.com)