



Ministry of Housing,
Communities &
Local Government

Building Safety Bill

Overview of draft construction products regulations

October 2021



- The existing regulatory framework for construction products in GB derives from the **EU Construction Products Regulation 2011** (EU law continues to apply in Northern Ireland)
- **Not all construction products are covered by the existing regulatory framework.** Standards are mandatory for the 444 products covered by a UK designated standard in Great Britain and a harmonised European standard in Northern Ireland.
- The **UK Construction Product Regulations 2013** set out enforcement powers of the EU regulation, which is primarily for Trading Standards (although the Secretary of State has powers).

The existing regulatory framework

For products subject to a designated standard in GB, or a harmonised standard in NI, manufacturers are required to:

Put in place factory control processes

Keep a register of complaints

Provide a declaration of performance for at least one of the product's essential characteristics

Withdraw and recall products that don't comply or present a risk

Carry out an assessment and verification of constancy of performance (AVCP) – which might include third party testing



Existing regulatory framework: issues

There are a number of issues with the existing regulatory framework...

No obligation on economic operators to ensure that products are safe or to provide information about any remaining risks.

Regulatory gap – not all construction products on the UK market covered by a regulatory framework.

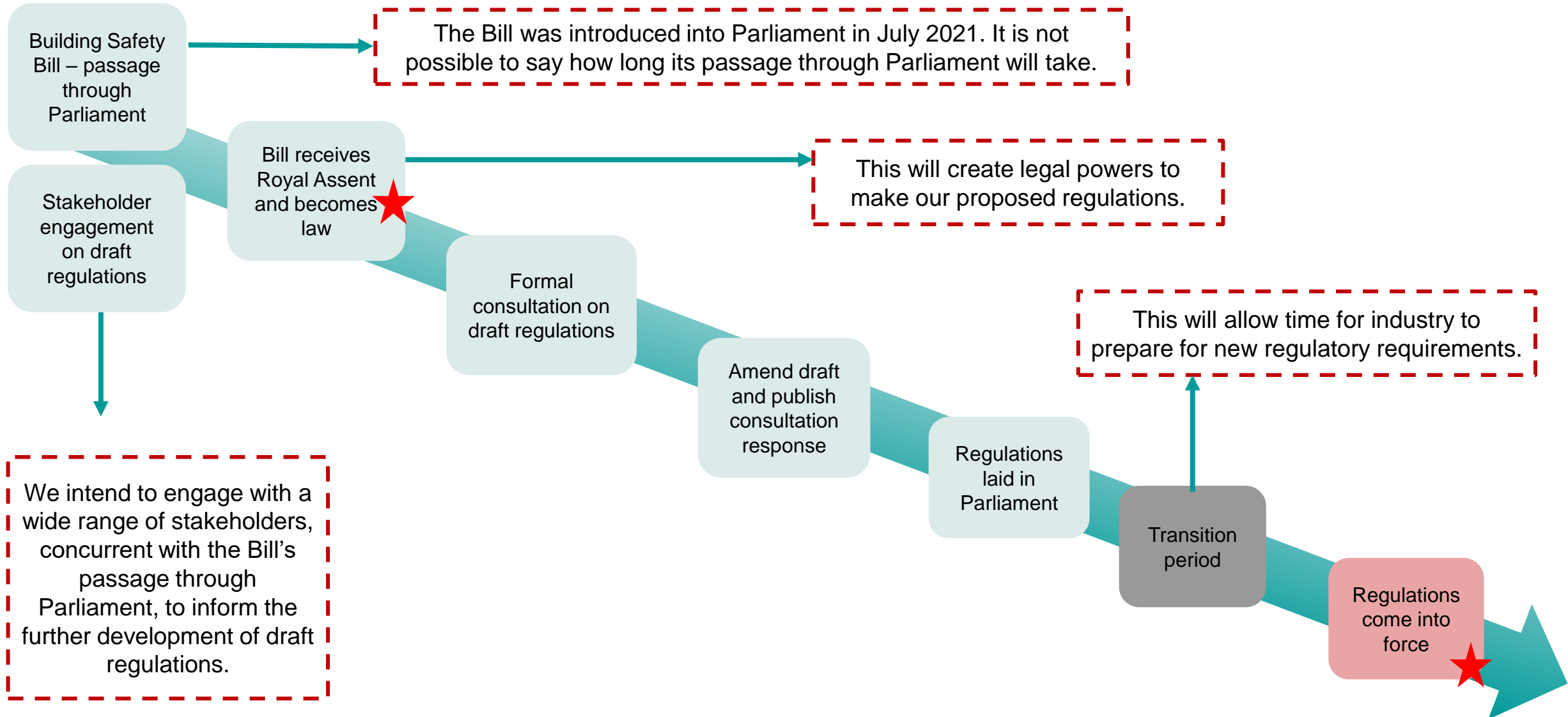
Focus on harmonisation, rather than safety – some products that would risk causing death or serious injury if they were to fail are not covered by existing regulations.

No national oversight of market surveillance and enforcement activity.

Limited enforcement of existing regulatory regime – Trading Standards lack technical knowledge and expertise in this area and do not prioritise construction products.



Proposed regulatory framework: sequencing





Overview of proposed regulatory framework

We want to ensure that all construction products available on the UK market fall under a **regulatory regime**. We will do this through:

Introducing a **general safety requirement**, requiring construction products to be safe before they can be placed on the UK market.

Creating a **statutory list of 'safety critical' products** (where their failure would risk causing serious injury or death) and bringing the regulation of these products in line with those subject to a designated standard under the existing regime.

Maintaining the existing regulatory approach for products subject to a designated standard (*EU law will continue to apply in NI*).

This will be underpinned by a strengthened **market surveillance and enforcement** regime. We will create new powers that can be exercised by OPSS and local Trading Standards, so that safety concerns can be identified and dealt with and action can be taken against those who do not comply with the regulations.

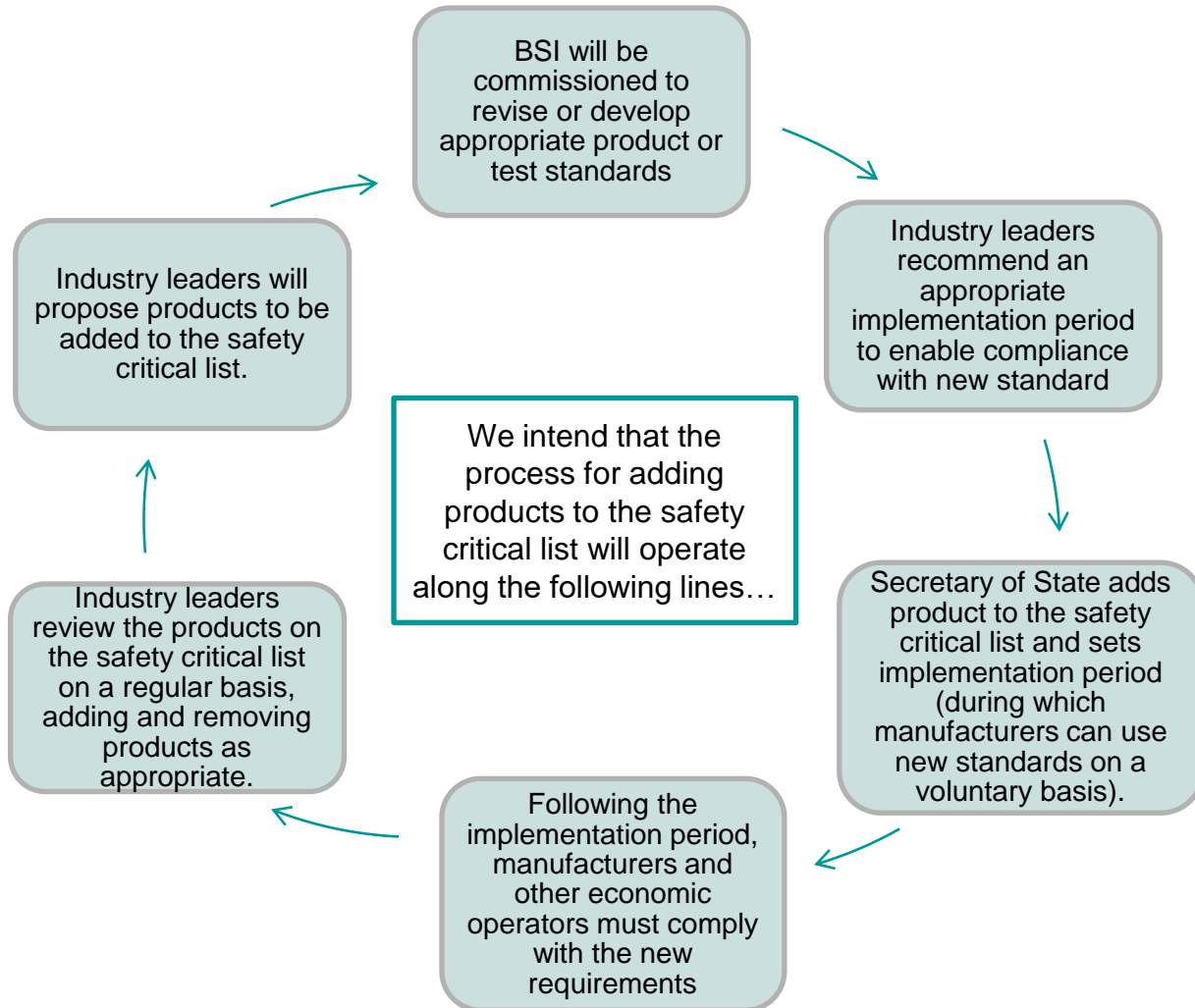


General Safety Requirement: overview

- We are proposing an approach modelled on existing requirements for consumer products (the General Product Safety Regulations 2005).
- We intend to introduce a requirement that manufacturers, importers and distributors must not place a construction product on the market unless it is a **safe product**.
- Manufacturers will be required to carry out a risk assessment that identifies all normal and reasonably foreseeable uses of the product, the risks associated with these and the ways in which risks can be eliminated or reduced.
- **Importers and distributors** will be required to ensure that the manufacturer has fulfilled their obligations under the general safety requirement. Other obligations on these groups will **broadly mirror those on manufacturers** in a way that is relevant to their function.
- The regulations will also introduce specific requirements on manufacturers, importers and distributors in relation to the following:
 - The provision of technical documentation and customer information
 - Labelling the product with their details
 - Sample testing
 - Correcting, withdrawing or recalling unsafe products.

'Safe product' is a term that will be defined in the regulations as a construction product which, under normal or reasonably foreseeable conditions of use, taking into account certain matters:

- Does not present any risk to the health and safety of persons; or
- If it does, the risk is as low as it can be compatibly with using the product.



Safety Critical Products: overview

- We intend to bring the regulation of safety critical products in line with arrangements for products subject to a designated standard in GB, or a harmonised standard in NI.
- This means that requirements on manufacturers will include the following:
 - Comply with the AVCP system set out in the safety critical standard.
 - Ensure that the product meets the required performance for each safety critical property set out in the standard
 - Put in place factory control processes to ensure that performance is consistently met
 - Draw up technical documentation and Declaration of Performance (DoP)
 - Ensure that the product is accompanied by easily understandable instructions and safety information.
 - Affix UKCA marking to the product.

As with the general safety requirement, obligations on will **broadly mirror those on manufacturers** in a way that is relevant to their function (e.g. only product on the market if requirements set out in standard have been complied with and product conforms with DoP).



Market surveillance and enforcement powers

- The regulations will create a number of market surveillance and enforcement powers than can be exercised by local Trading Standards, the Secretary of State or a person appointed by the Secretary of State. This will pave the way for the national regulator for construction products, which will be based in the Office for Product Safety and Standards (OPSS).
- Examples of the powers that will be created include the following:

Monitoring and investigation

- Require provision of information, identification of other economic operators and the production of documents.
- Enter premises (with and without warrant) and require assistance from persons on premises.
- Purchase goods.
- Observe the carrying on of business.
- Seize and detain goods and documents.

Notices and forfeiture

- Undertakings – voluntary arrangements proposed by business which become binding. Failure to comply allows enforcement action to commence.
- Rectifying a specific product – compliance notice
- Preventing further harm – Withdrawal Notice, Recall Notice, Notice to Mark, Notice to Warn, Forfeiture Application.
- Rectifying a systemic problem – Improvement Notice.

Sanctions

- Financial penalties – an administrative decision by regulator, at civil standards.
- Criminal offences – Courts may impose custodial sentences or unlimited fines.

The regulations will also:

- Set out the threshold at which enforcement authorities can use these powers, the process for appeals against notices and the activities undertaken by enforcement authorities for which they may recover costs from economic operators.
- Enable OPSS to enforce against false or misleading claims about the performance of construction products.
- Enable the sharing of information between enforcement authorities and relevant persons for relevant functions (e.g. other regulators).



Discussion: Derogations and simplified procedures for safety critical products

In addition to seeking general feedback on the detail of our draft regulations, we are keen to seek the views of CPA technical committee members on the following specific issues:

	Position	Points for discussion
Derogations and simplified procedures	<ul style="list-style-type: none"> The existing regulations include derogations from drawing up a Declaration of Performance or simplified procedures for testing and certification that manufacturers can undertake in certain circumstances. We are not proposing to replicate these for products on the safety critical list. 	<ul style="list-style-type: none"> To what extent are derogations and simplified procedures used at present? What would be the benefits of removing these derogations and simplified procedures? What issues might result from removing these? Who would be affected?
UKCA marking	<ul style="list-style-type: none"> As currently drafted, our proposed regulations will require manufacturers to affix UKCA marking to a safety critical product. This is in line for requirements for products subject to a designated standard under the existing regulations. We are keen to hear the views from industry representatives and others as to whether or not we should require UKCA marking for safety critical products, so that we can consider the position we should take when we finalise these regulations 	<ul style="list-style-type: none"> What would be the benefits of requiring UKCA marking for safety critical products? What would be the risks of not including this requirement?



Overview: Derogations and simplified procedures in existing construction products regulations

Derogations	Simplified procedures
<p>Article 5 includes a derogation from drawing up a declaration of performance for construction products subject to a designated standard where they are:</p> <ul style="list-style-type: none">▪ individually manufactured or custom-made in a non-series process in response to a specific order, and installed in a single identified construction work.▪ manufactured on the construction site for its incorporation in the respective construction works.▪ manufactured in a traditional manner or in a manner appropriate to heritage conservation and in a non-industrial process for adequately renovating construction works officially protected as part of a designated environment or because of their special architectural or historic merit.	<p>Articles 36, 37 and 38 allow specific simplified procedures for testing and certification for the in the following circumstances:</p> <ul style="list-style-type: none">• Where specific technical documentation or another article of the regulations allow for a simplified procedure to be used.• the construction product corresponds to the product-type of another construction product, manufactured by another manufacturer and already tested in accordance with the relevant designated standard.• The product is a system of components, where the components or system have already been tested.• The manufacturer is a micro-enterprise.• The product is individually manufactured or custom-made in a non-series process in response to a specific order, and which are installed in a single identified construction work.