

Appendix 1

PART 21 - Amendment to European Union (Construction Products) Regulations 2013 (S.I. 225 of 2013) for the appointment of a market surveillance authority for construction products and any consequential amendments.

Minister for Housing, Local Government and Heritage

Head 21.1 Amend European Union (Construction Products) Regulations 2013 (S.I. 225 of 2013) - Definitions

Provide that –

Interpretation generally

In these Regulations

“competent authority” means a body specified under and in accordance with Regulation 10, a local authority may be a competent authority;

Explanatory Note:

Head 21.1 provides for the definition of a competent authority. Currently no definition exists. The policy intention is that the definition will allow local authorities to be appointed as competent authorities. This facilitates a local authority to be appointed by the Minister as a market surveillance authority under Regulation 10(1)(b), which is in line with (and will facilitate) the policy decision to appoint Dublin City Council as a market surveillance authority with a national role. Regulation 10(1)(b), provides that a competent authority, appointed by the Minister thereunder, shall be a market surveillance authority in respect of specific construction products placed or made available on the market as the case may be, in the State.

Head 21.2 Amend European Union (Construction Products) Regulations 2013 (S.I. 225 of 2013) to allow a competent authority to be appointed in respect of all construction products placed or made available on the market in the State, rather than only specific construction products

Provide that -

Amendment of Regulation 10 of the European Union (Construction Products) Regulations 2013 (S.I. 225 of 2013)

1. *To substitute Regulation 10(1)(b) with the following: -*

*(b) a competent authority that may be appointed by the Minister in respect of specific, **or all**, construction products placed on the market, or as the case may be, made available on the market, in the State,”*

1a. To substitute Regulations 10(2)(b) with the following: -

*(b) where appointed by the Minister pursuant to paragraph (1)(b), shall be responsible for the market surveillance **of all construction products, or those construction products specified by the Minister**, placed on the market, or as the case may be, made available on the market, in the State and shall take such steps as are necessary for this purpose, or*

2. To insert after Regulation 10(2) the following Regulation 10(3):

(3)(a) Notwithstanding s. 11(6) of the Local Government Act 2001, any local authority appointed as a market surveillance authority under paragraph (b) of Regulation 10(1) shall have jurisdiction throughout the State.

Explanatory Note:

Head 21.2 provides for an amendment to Regulation 10(1)(b) to authorise the Minister to appoint a competent authority in respect of all construction products placed or made available on the market. Currently, the regulations only authorise the Minister to appoint a competent authority in respect of “specific” construction products.

Consistent with the policy decision to appoint Dublin City Council as a “national” market surveillance authority, this requires their appointment to be made on the basis that DCC will be the competent authority in respect of all relevant construction products and not limited to specific products.

This head also provides for an amendment to Regulation 10(2)(b) to ensure that the responsibilities of a market surveillance authority appointed under 10(1)(b) can extend to all construction products and not just in respect of those specified by the Minister. This amendment is necessary as a consequence of the change to Regulation 10(1)(b) and ensures consistency.

To note, the application and scope of the European Union (Construction Products) Regulations 2013 (S.I. 225 of 2013) are limited to construction products to which the provisions of the Construction Products Regulation (Regulation (EU) No. 305/2011) apply.

In general, the jurisdiction of a local authority is limited to its functional area under Section 11(6) of the Local Government Act, 2001. There are however, situations provided for under Part 10 of that Act where agreements and arrangements may be made for one local authority to carry out the function of another local authority. Given the importance of the functions and powers of a “market surveillance authority” under Part 4 of the European Union (Construction Products) Regulations 2013 (S.I. 225 of 2013) and the need for a centralised competent authority to operate at a national level, it is critical that any market surveillance authority under Regulation 10 has a solid and unimpeachable legal basis, hence the decision to seek to provide for same by way of primary legislation and not by an agreement under Part 10 (Local Government Act, 2001).

Head 21.2 also provides in so far as a local authority appointed under amended Regulation 10(1)(b) exercises that role as a “national” market surveillance authority it should have jurisdiction outside its own administrative area for this purpose.