

Explanatory Memorandum on the Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on mutual recognition in relation to conformity assessment

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Command Paper No 760

1. Introduction

1. This explanatory memorandum has been prepared by the Department for International Trade and is laid before Parliament as an un-numbered Act Paper.

2. Subject matter and purpose of the Agreement

1. The purpose of the Agreement between the Swiss Confederation and the United Kingdom of Great Britain and Northern Ireland on mutual recognition in relation to conformity assessment (the “Agreement”) is to reduce non-tariff barriers related to conformity assessment on the following five sectors which have an independent Swiss conformity assessment mark (the “CH mark”):
 - (a) Electrical Equipment and Electromagnetic Compatibility;
 - (b) Measuring Instruments;
 - (c) Radio Equipment;
 - (d) Transportable pressure equipment; and
 - (e) Noise emitting equipment for use outdoors.

3. Conformity Assessment Background

1. Conformity assessment is the process of determining whether a product meets requirements to enable it to be legally placed on a market. As such, it plays a critical part in ensuring products are safe for consumers and business.
2. Some regulations require this conformity to be assessed by an independent third party known as a Conformity Assessment Body (“CAB”). Alternatively, some regulations permit manufacturers to declare their own conformity.
3. Mutual Recognition Agreements (“MRAs”) dealing with conformity assessment can make exporting easier. Under an MRA, CABs in an exporter’s home market can, in agreed circumstances, provide for conformity assessment against the importing country’s regulations.

Without an MRA, an exporter would need to instruct a CAB in the importing, or third country, to provide conformity assessment, thereby typically leading to increased cost to the exporter.

4. MRAs can therefore help lower importing costs, maintain choice for consumers, and save time and effort for manufacturers. Products can be placed on the market more easily than if they were required to undergo a test of conformity in the importing country to assess whether they meet the requirements of that nation.
5. The UK has stand-alone MRAs with Australia, New Zealand and the United States of America, and our Free Trade Agreements with Canada, Israel and Japan also provide for conformity assessment agreement.

4. **MRA Background**

1. The Agreement between the European Community and the Swiss Confederation on mutual recognition in relation to conformity assessment (the “EU-Swiss MRA”) came into force in 2002. Whilst Switzerland has its own independent “CH” mark, it also recognises the EU conformity assessment mark too, known as “CE”. The CE mark is used to place goods onto the Swiss market in more sectors than the CH mark.
2. As a consequence of EU exit, the UK sought to retain as much coverage provided by the EU-Swiss MRA as possible.
3. The Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation entered into force in 2019. This Agreement included mutual recognition of conformity assessment provisions, thereby allowing continued coverage of three sectors from the EU-Swiss MRA. These sectors accounted for approximately 70% of UK-Switzerland bilateral trade previously covered by the EU-Swiss MRA.
4. The majority of the remaining 30% of bilateral trade continued to be covered after EU exit, pursuant to Swiss temporary measures, spanning 13 sectors.
5. Originally these measures were due to last from 1 January 2021 until 31 December 2021; the latter date being until when the UK had previously planned to recognise the CE mark. Recognition in this context meant that the UK allowed products assessed against EU regulations and stamped with a CE mark to be placed on the British market – this included sectors covered by the EU-Swiss MRA.

6. In August 2021, the UK announced that it would extend recognition of the CE mark to 31 December 2022. In December 2021, Switzerland agreed, and publicly announced, that it would extend its temporary measures to the same date, after which they would expire.
7. During this period of temporary measures, the Swiss have been content that UK product regulations in the 13 sectors were sufficiently similar to those found in Switzerland. As such, they have accepted products onto the Swiss market that have been assessed by a UK CAB against UK regulations.
8. The Swiss temporary measures are now due to expire on 31 December 2022. In their absence, British businesses exporting to Switzerland would, where third party conformity assessment is required, need to instruct a CAB in Switzerland, or a third country with whom Switzerland has an alternative conformity assessment agreement.
9. To address this, and to allow for conformity assessment to take place in the UK prior to export, the UK has secured in this Agreement coverage for five of the sectors included in the Swiss temporary measures. These sectors are listed in Section 2(1) above and collectively represent approximately £400 million of bilateral trade.
10. These sectors require the use of the CH mark (controlled by Switzerland), although the CE mark (controlled by the EU) is also accepted. By contrast, the remaining eight sectors covered by temporary measures (which do not form part of this Agreement) use only the EU's CE mark domestically – there is no standalone Swiss marking.
11. The use of a standalone Swiss mark is essential for a sector to be included in this Agreement. This is because it provides for recognition of third-party conformity assessment carried out in the exporting country to the importing country's regulations. Whereas the included five sectors can be assessed against Swiss regulations, the other eight sectors cannot because they require use of the rules of a third territory (the EU), over which neither party has control.
12. This Agreement is unaffected by the UK's announcement of 14 November 2022 that it will continue to recognise the CE mark in many sectors until 31 December 2024.

5. **Status of existing conformity assessment certificates**

1. For the five sectors included in the Agreement conformity assessment certificates already issued in the UK before 31 December 2022 will continue to be valid for use on the Swiss market after 1 January 2023.

Any product which requires a new certificate to be placed on the Swiss market from 2023 onwards will need to be assessed against the Swiss technical regulations, but this can be done by a UK CAB.

2. Certificates issued in the UK before 31 December 2022 in the eight sectors currently covered by temporary measures, but which are not captured in the Agreement text, will no longer be valid for entry of products not already placed on the Swiss market.
 - (a) If a business is exporting to the EU in addition to Switzerland, it will already be using overseas CABs in order to obtain CE marking, and can continue to use those CABs to access the Swiss market.
 - (b) If a business is: exporting to Switzerland, but not the EU; and in sectors where third party conformity assessment is required; it will need to use a Swiss or other EU-approved CAB to place products on the Swiss market for those sectors.
3. DIT is working closely with the Department for Business, Energy and Industrial Strategy and the Department for Transport on a communications strategy in order to both remind businesses about the expiry of temporary measures and inform them about the new Agreement in the five sectors covered. Communications with businesses commenced earlier in November 2022.

6. **Content**

1. This Agreement permits approved CABs in the UK or Switzerland, in agreed circumstances, to provide for conformity assessment against the other country's regulations.
2. This allows: (i) Swiss manufacturers to apply the United Kingdom Conformity Assessed (UKCA) mark to goods requiring third party conformity assessment before export to Great Britain; and (ii) UK manufacturers to apply the independent Swiss conformity assessment mark (CH) to goods requiring third party conformity assessment before export to Switzerland.
3. The Agreement provides for regulatory autonomy, meaning that the UK can diverge in regulations from the Swiss if it wishes to do so. This can be contrasted with the EU-Swiss MRA (reliant on regulatory harmonisation) and the Swiss temporary measures (reliant on Switzerland being content that UK regulation did not diverge from Swiss regulation).
4. The relevant product sectors covered by the Agreement are specified in the text, by reference to legislation.

5. The Agreement also provides the following:

- (a) Market surveillance: Greater collaboration between our national market surveillance authorities who are responsible for monitoring and enforcing product safety requirements.
- (b) Notification mechanisms: Switzerland and United Kingdom will notify each other of any legislative changes in the agreed sectors and establish mechanisms for mutual assistance between regulators.
- (c) Cooperation between Accreditation Bodies: This includes regular dialogues and information sharing on best practices, new technologies and CABs.

6. The Agreement specifies information regarding the treaty entering into force, the term of the treaty, notification of any regulatory changes once the treaty is signed and the suspension of the treaty. Details of these can be found below:

- (a) The Agreement will enter into force once both the United Kingdom and Switzerland have notified full completion of their domestic procedures.
- (b) The Agreement has an initial duration of three years. The parties can request the extension of the Agreement by notifying the other party at least six months before the expiry of the initial period.
- (c) Both parties will notify the other of any change to the legislative, regulatory and administrative provisions relating to the sectors within scope of the Agreement at least 60 days before their entry into force.
- (d) The Agreement can be terminated in part or in full by either party by notifying the other party and giving six months' notice.

7. A treaty may be amended by agreement between the parties. The terms of a treaty, including those on the method of consent to be bound (e.g., ratification), are subject to negotiation on a case-by-case basis with treaty partners. The Government will comply with the requirements of the Constitutional Reform and Governance (CRaG) Act 2010 in relation to any treaty amendment which does require ratification.

8. The Agreement authorises the Joint Committee to make minor amendments to the sector chapters within Annex 1 of the text. However, significant amendments to the Agreement or Annexes,

such as the addition of a new sector chapter, would be subject to ratification in accordance with CRaG Act 2010.

6. **Implementation**

1. The Department for Business, Energy and Industrial Strategy and the Department for Transport will be responsible for laying the required Statutory Instrument for this Agreement.

7. **Territorial Application**

1. The Crown Dependencies and Overseas Territories are not in scope of this Agreement.

8. **Financial**

1. Implementing the Agreement will necessitate some costs for the Government. This Agreement would require the establishment and maintenance of a joint committee. This could entail a minimal cost from logistics of travel, subsistence and officials' time where applicable.

9. **Human Rights**

1. There are no human rights considerations in relation to this Agreement.

10. **Consultation**

1. This does not relate to a devolved matter in relation to Scotland and Wales but both the Scottish and Welsh administrations have been consulted throughout this process. The Crown Dependencies have also been informed.
2. The Agreement text states that it will apply to the whole of the UK, including Northern Ireland. However, given the effect of the Northern Ireland Protocol, for goods placed on the market in Northern Ireland, the EU-Swiss MRA will continue to apply to Northern Ireland rather than this Agreement.
3. Northern Ireland will continue to recognise the results of conformity assessment procedures carried out under the EU-Swiss MRA. This is in accordance with the terms of the Northern Ireland Protocol to the Withdrawal Agreement.
4. The Northern Ireland Executive has been consulted throughout this process.

11. Provisional Application

1. If the Agreement does not take effect by 1 January 2023, then – given the expiry of Swiss temporary measures on 31 December 2022 – there will be a gap in coverage for the five sectors listed in Section 2(1), above.
2. It is anticipated that the earliest that UK procedures can be completed, and therefore the earliest the Agreement could enter into force in the UK, is early 2023. This follows the completion of negotiations in October 2022 and needing to wait for Swiss processes to complete before commencing UK ratification – the two countries’ domestic ratification processes being quite different.
3. To allow businesses in the five sectors to benefit from this Agreement without delay, in accordance with Article 30 of the Agreement, the UK and Switzerland agreed that they will therefore apply the Agreement provisionally.
4. Provisional application can begin after exchange of diplomatic notes and lasts until 28 February 2023, or whenever both parties’ domestic implementation procedures are complete, whichever is the earlier.
5. It is anticipated that the Agreement will be provisionally applied from 1 January 2023.

12. Ministerial Responsibility

1. The Secretary of State for International Trade has overall responsibility for trade negotiations and for policy relating to UK’s trade relations with Switzerland.
2. The Secretary of State for Business, Energy and Industrial Strategy and the Secretary of State for Transport also have a policy interest.
3. The Secretary of State for the Foreign, Commonwealth and Development Office has overall responsibility for UK policy relating to the UK’s relations with Switzerland.
4. The Secretary of State for Justice is responsible for the overall relationship between the UK and the Crown Dependencies.

A handwritten signature in black ink, reading "Kemi Badenoch". The signature is written in a cursive, flowing style. The first name "Kemi" is written in a more compact, rounded script, while the last name "Badenoch" is more elongated and features a prominent, sweeping flourish at the end.

Kemi Badenoch MP
Secretary of State for International Trade and President of the Board of Trade and
Minister for Women and Equalities