

Definition of ‘placing on the market’ before and after the UK leaves the EU, if there’s no Brexit deal

This notice provides guidance on when ‘placing on the market’ is considered to take place for manufactured goods on the EU and UK markets.

This should be read alongside guidance on:

- [Placing manufactured goods on the EU internal market if there's no Brexit deal](#)
- [Placing manufactured goods on the UK market if there’s no Brexit deal](#)

This information applies to goods regulated under the ‘new approach’ (including the New Legislative Framework). The EU directives and regulations covered by this notice are outlined in [Annex A](#).

This notice is meant for guidance only. You should consider whether you need separate professional advice when making specific preparations.

This guidance does not cover customs or border processes, further information on which can be found here: www.gov.uk/government/collections/trading-with-the-eu-if-the-uk-leaves-without-a-deal#how-uk-businesses-can-prepare

This notice also provides some guidance on placing goods on the EU market. Please note that the sections of this guidance that relate to placing manufactured goods on the EU market have been interpreted from guidance published by the European Commission. The UK government is not responsible for this policy and this policy is subject to changes by the European Commission. If you are placing goods on the EU market you must refer to the European Commission for the full and up to date guidance about placing goods on the EU Market and details of any exceptions. See the section of this guidance titled ‘More Information’ for further detail.

When is a product ‘placed on the market’?

There are several elements which contribute to the concept ‘placing on the market’:

Scope

The concept of placing on the market refers to each individual product, not to a type of product, whether it was manufactured as an individual unit or in a series.

Point in time

A product is placed on the market (in the UK or EU) when it is made available for the first time on the market, i.e. when it is first supplied for distribution, consumption or use on the market in the course of a commercial activity, whether in return for payment or free of charge. This can be either when a new manufactured product, or a product imported from a third country (new

or used), is made available on the market for the first time. This will not change when the UK leaves the EU.

Status

Placing a product on the market supposes that there is an offer or an agreement (written or verbal) for the transfer of ownership, possession or any other kind of right (excluding intellectual property rights) concerning the product in question after the manufacturing stage has taken place. It does not require physical delivery of the product.

This concept of 'placing on the market' will stay the same in UK law if the UK leaves the EU without a deal.

The European Commission's ['Blue Guide'](#) on the implementation of EU product rules contains further detailed guidance on when placing on the market is considered to take place.

Status of products on the market in the UK if there's no deal

If the UK leaves the EU without a deal, a product imported from the EU to the UK will be considered as placed on the UK market when it is made available for distribution, consumption or use in the course of a commercial activity in the UK for the first time. This is in line with the current arrangements for goods imported from a non-EU country.

If goods are imported to the UK market from an EU-27 country post exit and they meet the relevant EU requirements, then they will still be able to be placed on the UK market post exit. The UK based importer of this product will have to make sure that the relevant EU requirements have been met by the manufacturer (as well as meeting other duties on the importer).

A product already available on the UK market pre-exit will continue to be considered as having already been placed on the UK market post exit (and any person who makes that product available on the UK market will continue to be regarded as a distributor and not an importer).

For cosmetic products, different rules apply. 'Placing on the market' in the context of cosmetic products means the first time the product is made available on the UK market post-exit. If a product is already available on the EU market (or the UK market), and the responsible person in the EU has complied with the EU notification requirements, if a responsible person based in the UK places that product within 90 days of exit, they have 90 days in which to meet the UK notification requirements. Details of the requirements for cosmetic products can be found in separate guidance.

Proof of placing on the market

Proof of placing on the market can be given on the basis of any relevant document ordinarily used in business transactions (e.g. contract of sale concerning goods which have already been manufactured, invoice, documents concerning the shipping of goods to distribution or similar commercial documents).

In practice, such proof will need to be given in case of checks upon importation or checks by market surveillance authorities. The evidence provided must make it possible to verify that it corresponds to the individual goods and quantity presented to customs or checked by market

surveillance authorities, for example, with the reference to the specific identification element of the goods.

Status of products on the EU market if there's no deal

The European Commission has set out in their guidance that, in a 'no deal' scenario, goods exported to the EU market from the UK will be considered as imports from a third country. Such products will be considered to be placed on the EU market when they are made available for distribution, consumption or use in the course of a commercial activity in an EU Member State for the first time.

The European Commission's guidance sets out that, in a 'no deal' scenario, products that have been placed on the market in the UK (but not the EU-27) before the point of exit will no longer be considered to be on the EU market after the point of exit.

However, if a good was placed on the EU market in the EU-27 before the UK leaves the EU then it will continue to be regarded as on the EU market after the UK leaves the EU.

The government is not responsible for the guidance published by the European Commission. You should consult the [European Commission preparedness notice on Industrial Products](#) for further information.

Illustrative examples of placing on the market in a 'no deal' scenario

The following examples provide further detail on when a product is considered to be placed on the market, in a no deal scenario.

The examples in this section of the guidance that relate to placing manufactured goods on the EU market have been interpreted from published European Commission guidance. UK government is not responsible for this policy and you should refer to the European Commission for the latest guidance and details of any exceptions. The European Commission have published their own examples of placing on the market, which are available in the next section of this guidance. Please also see the section of this guidance titled 'More Information' for further detail.

1. Product manufactured in the UK and sold to an EU-27 customer before the point of exit in a 'no deal' scenario, but still in transit (e.g. in the process of being shipped) to the customer based in the EU-27 on the withdrawal date.

The date that the product is placed on the EU market will be the date of the transaction between the manufacturer and the EU-27 customer after the manufacturing stage was completed. Placing on the market does not require physical delivery of the product.

These goods are considered to have been placed on the EU-27 market before the point of the UK's exit and can therefore continue to be made available in the EU market or remain with no need for re-certification, re-labelling or product modifications.

Nominated Persons will lose their status in the EU as from the withdrawal date, regardless of when products were placed on the market. Therefore, manufacturers need to ensure that, as from the point of exit, their designated nominated persons are established in the EU-27.

There is more detail on Nominated Persons here: www.gov.uk/guidance/placing-manufactured-goods-on-the-uk-market-if-theres-no-brexit-deal#authorised-representatives

2. Product leased from a UK company by a customer based in the EU-27 after the point of exit in a ‘no deal’ scenario.

Placing a product on the market supposes an offer or an agreement (written or verbal) for the transfer of ownership, possession or any other kind of right (excluding intellectual property rights) concerning the product in question after the manufacturing stage has taken place. This transfer is considered to have taken place in the circumstances of loan, hire or leasing of a product.

If a product has completed its manufacturing stage and there is an agreement to lease the product from a UK company to an EU-27 company which is reached after the point of the UK’s exit, then the product would be considered to be placed on the EU-27 market on the date of the agreement – that is, after the withdrawal date. In these circumstances, the EU-based company would become an ‘importer’ and the leased product would need to be compliant with the applicable EU legislation. This would mean (amongst other things) that, if the product is required to be tested by a notified body, it would have to be tested by a notified body based in the EU-27.

It is, however, important to note that repeated renting of the same product (i.e. the very same product not just an identical product) does not constitute a new placing on the market. This means that a product leased from a UK company to an EU-27 customer before the UK leaves the EU would be considered to have been placed on the EU market before the withdrawal date and can then be rented again within the EU market post-exit. That product would need to be compliant with the applicable EU legislation at the time the agreement to rent takes place.

Nominated Persons will lose their status in the EU as from the withdrawal date, regardless of when products were placed on the market. Therefore, manufacturers need to ensure that, as from the point of exit, their designated Nominated Persons are established in the EU-27.

3. Product manufactured by an EU-27 company and shipped to their UK subsidiary’s warehouse before the point of exit in a ‘no deal scenario’. The subsidiary then distributes the product to customers in the UK after the withdrawal date.

The product will be considered to be placed on the UK market when there is an agreement to supply it on the UK market for the first time. Therefore, in this instance, when the product is placed on the UK market will depend when the offer or agreement to supply takes place.

If there is an offer or agreement for the transfer of ownership or possession (or other right in the product) between the manufacturer and its UK subsidiary, then the date the product is placed on the market will be the date of that transaction. If that date is before exit then the UK subsidiary will be a distributor of the product. If that date is post-exit the UK subsidiary will be the importer and will place the product on the UK market.

If there is no offer or agreement between the EU-27 company and the UK subsidiary, and there is an offer or agreement between the EU-27 company and a separate company based in the UK, then date that that transaction takes place will be the date that the product is placed on the market. If this date is before exit day, the UK company will be a distributor. If this date is after the date of exit, the UK company will be the importer.

4. Product manufactured by an EU-27 company and sold to a company in the UK before the point of exit. The UK company then distributes the product to customers in the UK from their warehouse after the point of exit.

These goods are considered to have been placed on the market in the UK before the withdrawal date and can therefore continue to be made available in the UK market or remain in use with no need for re-certification, re-labelling or product modifications. Authorised Representatives based in the EU, appointed and mandated by a manufacturer pre-exit will continue to be recognised for the UK market. There are different rules for cosmetic products where there will have to be Responsible Persons based in the UK from the point of exit.

5. Product transferred from a manufacturer in the UK to an authorised representative in the EU whom the manufacturer has engaged to ensure that the product complies with EU legislation, after the point of the UK's exit in a 'no deal' scenario

Placing on the market is not considered to have taken place when a product is transferred from a manufacturer in a third country (including the UK if we leave the EU without a deal) to an Authorised Representative in the EU, whom the manufacturer has engaged to ensure that the product complies with EU legislation.

If, however, the Authorised Representative of a third country manufacturer supplies a product to a distributor or a consumer within the EU (i.e. placing it on the EU market), they then no longer act as a mere Authorised Representative but act as the importer and are subject to the obligations of importers.

6. Products manufactured in the UK, or imported into the UK from a third country, that are offered for sale online to customers based in the EU-27 by sellers based in the UK after the point of exit in a no deal scenario.

Products offered for sale online by sellers based outside the EU-27 are considered to be 'placed on the EU-27 market' if sales are specifically targeted at EU-27 consumers or other end-users. The assessment of whether or not a website outside the EU-27 targets EU-27 consumers has to be done on a case-by-case basis, taking into account any relevant factors such as the geographical areas to which dispatch is possible, the languages available used for the offer or for ordering, payment possibilities, etc.

Products manufactured in the UK, or imported into the UK from a third country, and placed on the EU-27 market online after the withdrawal date will need to comply with all applicable EU product rules.

The European Commission's ['Blue Guide'](#) on the implementation of EU product rules contains further detailed guidance on when goods sold online are placed on the EU market.

7. Products manufactured in the UK and for sale online to EU-27 customers after the point of exit in a 'no deal' scenario, that are stored in a fulfilment house located in the EU-27.

Products offered by online operators based outside the EU market are sometimes stored in fulfilment houses located in the EU to guarantee their swift delivery to EU consumers. Where the activities of fulfilment service providers go beyond those of parcel service providers, they are considered to be part of the supply chain. It is likely that they will be considered to be distributors (and therefore will have to meet the corresponding legal duties) but analysis of the economic model of some operators may conclude that they are importers or Authorised Representatives.

You may find it helpful to refer to the European Commission's ['Blue Guide'](#) for more information.

8. Product manufactured in the UK and sold directly to an end-user in the EU-27 after the point of exit in a 'no deal' scenario

EU legislation does not create obligations for the end-users (professional users and consumers) of the products in their scope. This is the case even when there are no responsible economic operators present within the EU (for example, as may be the case in the context of products sold online),

Where a UK company sells directly to end-users in the EU-27, they will be permitted to continue doing so after the point of the UK's exit in so far as their products comply with all relevant requirements. There is no requirement that there is a separate 'importer' placing the product on the market but where there is one, that importer must comply with the EU rules.

European Commission examples

The European Commission has published examples demonstrating when 'placing on the market' is considered to take place, and what this means in relation to the UK's withdrawal from the EU in a no deal scenario in this Q&A document:

https://ec.europa.eu/info/sites/info/files/qa_brexit_industrial_products_en.pdf

This includes guidance on the following examples:

- Goods physically in the distribution chain or already in use in the EU-27 market on the withdrawal date.
- Goods manufactured either in the EU or in a third country, sold to an EU-27 customer before the withdrawal date after the manufacturing stage was completed but not yet physically delivered to the EU-27 customer on that date.
- Goods imported into the UK from a third country or manufactured in the UK, subsequently sold to an EU-27 customer before the withdrawal date but physically delivered to the EU-27 customer as of that date.
- Goods imported into the UK from a third country or manufactured in the UK before the withdrawal date, subsequently sold to an EU-27 customer as of the withdrawal date.

More information

This notice is meant for guidance only. You should consider whether you need separate professional advice before making specific preparations.

If you have any specific questions relating to goods regulation you can contact the Department for Business, Energy and Industrial Strategy at goodsregulation@beis.gov.uk.

The sections of this guidance that relate to placing manufactured goods on the EU internal market have been interpreted from published European Commission guidance. UK government is not responsible for this policy and you should refer to the European Commission for the latest guidance.

You may find it helpful to approach the European Commission for further guidance on placing products on the EU internal market.

- The European Commission's '[Blue Guide](#)' on the implementation of EU product rules contains detailed guidance on when placing on the market is considered to take place;

- The Commission's current guidance on Brexit preparedness is available here: https://ec.europa.eu/info/brexit/brexit-preparedness_en
- The Commission's Directorate General for Internal Market, Industry, Entrepreneurship and SMEs, which is the relevant department, can be contacted at grow-general-information@ec.europa.eu

Annex A - EU directives covered by this notice

- [Regulation for Accreditation and Market Surveillance – 765/2008](#)
- [Toy Safety - Directive 2009/48/EU](#)
- [Restriction of Hazardous Substances in Electrical and Electronic Equipment - Directive 2011/65/EU](#)
- [Pyrotechnic Articles - Directive 2013/29/EU](#)
- [Recreational craft and personal watercraft - Directive 2013/53/EU](#)
- [Civil Explosives - Directive 2014/28/EU](#)
- [Simple Pressure Vessels - Directive 2014/29/EU](#)
- [Electromagnetic Compatibility - Directive 2014/30/EU](#)
- [Non-automatic Weighing Instruments - Directive 2014/31/EU](#)
- [Measuring Instruments - Directive 2014/32/EU](#)
- [Lifts - Directive 2014/33/EU](#)
- [ATEX - Directive 2014/34/EU](#)
- [Radio equipment - Directive 2014/53/EU](#)
- [Low Voltage - Directive 2014/35/EU](#)
- [Pressure equipment - Directive 2014/68/EU](#)
- [Personal protective equipment - Regulation \(EU\) 2016/425](#)
- [Gas appliances - Regulation \(EU\) 2016/426](#)
- [Machinery Directive – Directive 2006/42/EC](#)
- [Noise emission in the environment by equipment for use outdoors – Directive 2000/14/EC](#)