

ASFP Advisory Note 25

ASFP position on CE marking Active Fire Curtains: Supply of Machinery (Safety) Regulations 2008, the Machinery Directive (2006/42/EC) and subsequent UK Statutory Instrument 2019 No. 696.

Active Fire Curtain products (to BS 8524 series) are classed as 'machines' in accordance with the UK Supply of Machinery (Safety) Regulations 2008 (SMR08) and the Machinery Directive (MD) 2006/42/EC, subsequently modified post Brexit by The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019, No. 696. This is because Active Fire Curtains meet the fundamental definition of machinery:

“an assembly, fitted with or intended to be fitted with a drive system other than directly applied human or animal effort, consisting of linked parts or components, at least one of which moves, and which are joined together for a specific application.”

Machinery can only be placed on the UK market when safe and in conformity with the Machinery Safety Regulations as mentioned above. There has been no change in the requirements for the safety marking of these products as a result of the Brexit Process. Therefore, active fire curtains must come with either CE marking (valid until 31/12/22) or UKCA marking (valid from 1/1/21 onwards) accompanied by a Declaration of Conformity and Instructions for installation, use and maintenance (both of which must be in the language of the end user). Before affixing the UKCA / CE marking, the product must meet the provisions of all relevant UKCA / CE marking legislation: in the case of electrically powered machinery this almost certainly includes the Electromagnetic Compatibility Regulations (EMC) 2016 or the Radio Equipment Regulations 2017, where equipped with wireless control; alongside SMR08. The Construction Products Regulation 2013 (CPR), which also require CE marking (valid until 31/12/22) or UKCA marking (valid from 1/1/21 onwards) may also apply in certain cases. If the CPR applies, then the manufacturer will need to produce a Declaration of Performance. For more information on the requirements of Construction Products Regulations in respect of Active Fire Curtains, please see ASFP's Technical Guidance Document 21 ([Insert link here](#))

A single Declaration of Conformity (DoC) for all product legislation applicable to the product should be produced by the 'Responsible Person'. Because the machinery legislation (SMR08/MD) applies either when machinery is first placed on the single market, eg complete factory made products, or if

not placed on the market, when first put into service, eg where constructed in situ from component parts assembled to form a new machine, the Responsible Person may, depending on the circumstances, be either the factory manufacturer or the final installer of the new machine.

Where an installer or manufacturer purchases a 'drive' which has been marketed under SMR08/MD as a 'partly completed machine' (so it must be supplied with a Declaration of Incorporation (DoI), instead of a DoC), and they incorporate it with other components to form a machine in scope of SMR08/MD, they as the Responsible Person must before it is put into service/placed on the market ensure it is safe and compliant as described above.

Under SMR08 machinery must be designed and constructed to meet all relevant essential health and safety requirements (EHSRs, they are listed in MD Annex 1 and the schedule to SMR08), following the hierarchical and other design principles of EHSR 1.1.2. This must be shown in a technical file for the particular product design (for its content see MD Annex VII and the schedule to SMR08). The Responsible Person must retain the technical file for at least 10 years after the last product in series has been made and produce it on demand to the relevant authorities in whichever market the product has been placed. The DoC must also include an address within the relevant market (UK or EU as appropriate) from where the technical file may be obtained.

The technical file must contain sufficient detail to show how each of the relevant **essential health and safety** requirements have been met, for all of the hazards exhibited by the product, to the 'state of the art', including:

- determine the limits of the machinery,
- which include the intended use and any reasonably foreseeable misuse,
- identify the hazards that can be generated by the machinery and the associated hazardous situations,
- estimate the risks, taking into account the severity of the possible injury/damage
- to safety and health, and the probability of its occurrence,
- evaluate the risks, with a view to determining whether risk reduction is required, in accordance with the objectives of the Directive/SMR08, and

eliminate the hazards or reduce the risks associated with these hazards by the application of protective and other measures, in the following order of priority:

1. eliminate or reduce risks as far as possible - inherently safe machinery design and construction,
2. take the necessary protective measures in relation to risks that cannot be eliminated,
3. inform users of the residual risks due to any shortcomings of the protective measures adopted, indicate whether any particular training is required and specify any need to provide personal protective equipment.

Active Fire Curtains as 'machines' do not fall within the scope of Annex IV of MD/SMR08 and therefore a Conformity Assessment Body is not required to assess their conformity as machinery under MD/SMR08. (However, this will not be the case if CPR applies).

Furthermore, any manufacturer wishing to supply 'machines' into the single European market (EU 27/EFTA/Switzerland), eg from the UK now as a 'third-country', must continue to meet the requirements of the single European market: EHSRs, conformity assessment, CE or UKCA marking and labelling, DoC and Information (in the language of the end user).

At present the precise situation for the UK market from 2022 is expected to remain the same and the UK product supply legislation will continue in force requiring the same health and safety objectives of the EHSRs to be met and information to be provided to users: in a similar way to the pre-existing legal obligations on designers, manufacturers, suppliers and importers of articles for use at work, for their safety and an absence of risk to health, since the 1970s (by virtue of Section 6 of the Health & Safety at Work etc Act 1974, and the identical requirements within Article 7 of the Northern Ireland Health and Safety at Work Order of 1978).

With regard to European product and test standards, for the purposes of the MD/SMR08, the use of any standard is optional at the manufacturer's choice (but where standards are used, that are harmonised to an EU Directive/Regulation – and subsequently designated in UK by Secretary of State they may confer a presumption of conformity with that Directive/Regulation). Please be aware that if relevant for the product BS EN 13241-1 no longer provides for a presumption of conformity with respect to the EHSRs of the Machinery Directive (EC Decision published in 2015), but it might still be applicable under CPR, the Construction Products Regulations, which also require CE or UKCA marking and a DoP.

In summary manufacturers and where relevant, installers, of Active Fire Curtains must meet the requirements of the Supply of Machinery (Safety) Regulations 2008/Machinery Directive, subsequently modified by The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019, No. 696, as they apply to machinery, by:

- Manufacturers and where relevant installers, before they place on the market, or put into service for the first time, for each new Active Fire Curtain, affixing the CE marking visibly, legible and indelibly, as well as,
- give the name and address of the person responsible (manufacturer and any authorised representative, if any, or installer as manufacturer) adjacent to the CE marking, and
- provide to the end-user a Declaration of Conformity (DoC) and Instructions for the installation, use and maintenance of the product, in the language of the end-user.
- Also, compile, retain, and make available when requested by a European market surveillance authority, a technical file that shows how all of the relevant essential health and safety requirements have been met to the 'state of the art', and where products are made in series, measures to ensure continued conformity, and
- in doing so they can choose to meet these requirements by the use of standards, which if harmonised, and followed in full, may give a 'presumption of conformity'.

Guidance on the application of the Machinery Directive 2006/42/EC is available freely from the European Commission [website](#) (Edition 2.2. published October 2019).

The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019, No. 696 is also available from UK Government website.

Further guidance on the supply of products is available on HSE's [website](#) including

The free download leaflet [Buying new machinery](#)

The Supply of Machinery (Safety) Regulations 2008 (and the 2011 amendment) are freely available from www.legislation.gov.uk

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