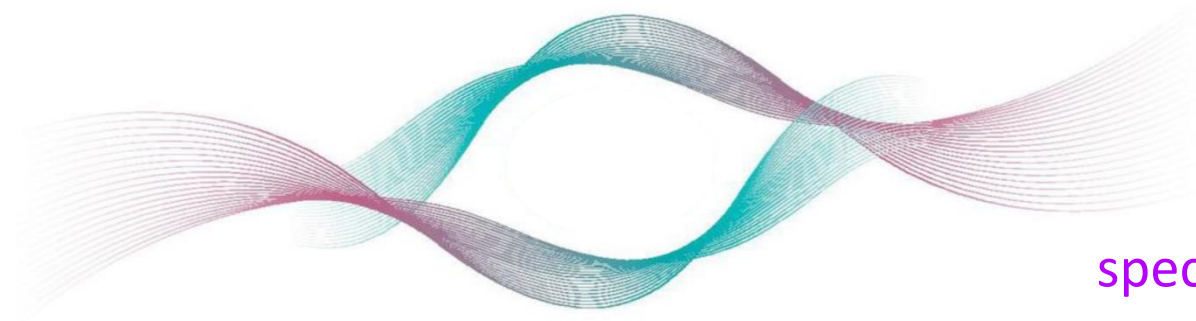


# **Placing Radio Equipment on the GB and Northern Ireland markets: an update**

**The Radio Equipment Regulations 2017, The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019,  
The Northern Ireland Protocol etc**

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# Introduction

## **The impact of the UK leaving the EU on UK Spectrum policy**

In 2016, I wrote a Report for the Spectrum Policy Forum with this title

- It concluded that the impact on wireless products would be much more significant than on spectrum policy itself
- The Withdrawal Agreement reflects the alternative in the report with greatest impact

## **Key developments since 2016**

- The Government decided to leave the EU single market, except for Northern Ireland
- The Northern Ireland Protocol has important implications for placing products on both the NI and GB markets
- ETSI is finding difficulties in getting harmonised Standards for the Radio Equipment Directive published in the Official Journal of the EU

## **Disclaimers**

- The content of this presentation is not legal advice
- It is based on information in the public domain
- It is based on the status in October 2021 (*which may change before the new regimes come into effect on 1st January 2023*)

**Simon Pike**



# Overview

## **The three regimes for placing products on the GB and Northern Ireland markets**

- UKCA marking alone (*for Great Britain*)
- CE plus UKNI marks (*mainly for Northern Ireland*)
- CE marking alone (*mainly for Northern Ireland*)
  - UKCA mark shows conformity with UK 'Designated Standards'  
(similar to EU Harmonised Standards, but the list is published by UK Government)

## **Harmonised Standards for the Radio Equipment Directive**

- Comparing the process for the R&TTE Directive and the Radio Equipment Directive

## **Provisions of the Radio Equipment Regulations 2017 as amended**

*(amended by The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019)*

- Consequences: Intended and possibly unintended

## **Some hypothetical questions**

- To explore what might happen in certain situations

# Essential Requirements

## Article 3 – Essential Requirements

1. Radio equipment shall be constructed so as to ensure:
  - (a) the protection of health and safety of persons and of domestic animals and the protection of property.....
  - (b) an adequate level of electromagnetic compatibility ....
2. Radio equipment shall be so constructed that it both effectively uses and supports the efficient use of radio spectrum in order to avoid harmful interference.
3. Radio equipment within certain categories or classes shall be so constructed that it complies with the following essential requirements:
  - (a) radio equipment interworks with accessories, in particular with common chargers;
  - (b) radio equipment interworks via networks with other radio equipment
  - (e) radio equipment incorporates safeguards for personal data and privacy ...
  - (f) radio equipment supports certain features ensuring protection from fraud;
  - (g) radio equipment supports certain features ensuring access to emergency services;
  - (i) radio equipment supports certain features in order to ensure that ... the compliance of the combination of the radio equipment and software has been demonstrated.

# The new regimes

## **These come into force on 1<sup>st</sup> January 2023**

*(These apply for goods placed on the market after 1 January 2021)*

- The CE mark is sufficient until that date
  - Provided that the conformity assessment is still valid
  - Unless the product requires mandatory third-party conformity assessment that has been carried out by a UK conformity assessment body
- A fully manufactured good is 'placed on the market' when an ... agreement (or offer of an agreement) to transfer ownership or possession or other property rights in the product is exchanged.
- 'Placing a good on the market' means each individual good, not a type of good.
- It does not require the physical transfer of the good.
- The UKCA marking can be placed on a label affixed to the product or on a document accompanying the product until 31 December 2023.

# UKCA marking alone

## **Where can this be placed on the market?**

- Great Britain (England, Wales and Scotland)

## **Who can place a product on the market?**

- The manufacturer or Authorised Representative must be based in UK

## **Restrictions on supply chain**

- Great Britain
- Plus any country outside the European Economic Area that accepts the UKCA marking
  - Possibly through trade agreements with third countries

## **What standards apply?**

- UK Designated Standards

## **Who can undertake mandatory third party conformity assessment?**

- A conformity assessment body established in the United Kingdom

# CE plus UKNI marking

## **Where can this be placed on the market?**

- Northern Ireland

## **Who can place a product on the market?**

- A business “established in Northern Ireland”
- See Regulation (EU) 2019/1020

## **Restrictions on supply chain**

- Cannot be placed on the market in EU
- “The UK government guarantees unfettered access for Northern Ireland’s businesses to the whole of the UK market, without the need for additional approvals before placing goods on the market in the rest of the UK. You can place qualifying Northern Ireland goods on the market in Great Britain based on the conformity markings you use in Northern Ireland.”

## **What standards apply?**

- EU Harmonised Standards

## **Who can undertake third party conformity assessment?**

- UK says: A conformity assessment body established in the United Kingdom
- EU says: A Notified Body in Northern Ireland

# CE marking alone

## **Where can this be placed on the market?**

- Northern Ireland

## **Who can place a product on the market?**

- A business “established in Northern Ireland”
- See Regulation (EU) 2019/1020 and the definition of “qualifying Northern Ireland goods”

## **Restrictions on supply chain**

- Can be placed on the market in EU
- “The UK government guarantees unfettered access for Northern Ireland’s businesses to the whole of the UK market, without the need for additional approvals before placing goods on the market in the rest of the UK.”

## **What standards apply?**

- EU Harmonised Standards

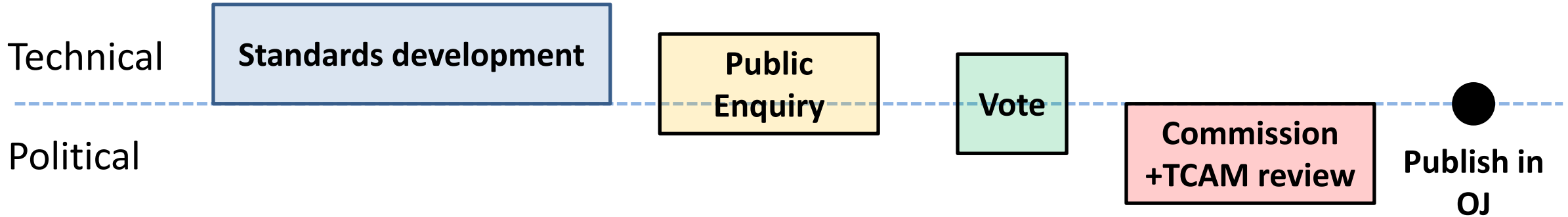
## **Who can undertake mandatory third party conformity assessment?**

- An EU-recognised notified body (including a body in a country with which the EU has a relevant mutual recognition agreement)
  - The UK does not have a mutual recognition agreement with the EU

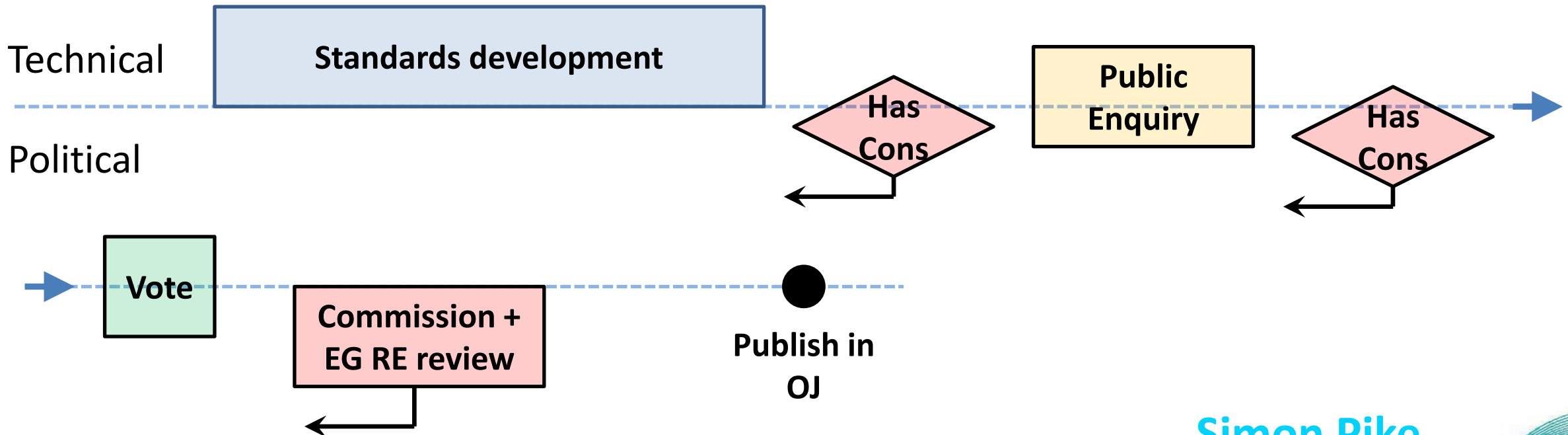


# Harmonised Standards process for the R&TTE and RE Directives

## R&TTE Directive



## Radio equipment Directive



# Issues in RE-D Harmonised Standard Development

## Commission Requirements for Harmonised Standards

**Manufacturers declarations not permitted & Options not allowed**

**Requirement that equipment be 'state of the art'**

**Over-emphasis on receiver parameters**

- These can make testing more complex
- They can require equipment to operate in a non-functional way for testing and result in equipment needing functionality and performance just for testing
- Equipment does not always need to be 'state of the art' to perform its intended function
  - For some types of equipment, this has no bearing on efficient use of the spectrum
  - For example, short range sensors at mm-waves

## Intervention of Commission in the standards development process

It has appointed 'HAS Consultants' to review draft standards during development

- This has complicated and lengthened the process, and created uncertainty in the outcome
- It has added a 'political' element to the development of standards

# What is a UK ‘Designated Standard’?

- (1) .... in these Regulations a reference to a **“designated standard”** means a **technical specification** which is —
- (a) **adopted** by a recognised standardisation body ... ; and
  - (b) **designated by the Secretary of State** by publishing the reference to the standard ... in a manner the Secretary of State considers appropriate.
- (2) For the purposes of paragraph (1), a **“technical specification” means a document** that prescribes technical requirements to be fulfilled ... and which lays down one or more of the following—
- (a) the characteristics required of a product, including—
    - (i) performance, interoperability, environmental protection, health, safety or dimensions *[etc]* ;
    - (ii) the requirements applicable to the product as regards testing and test methods, marking or labelling and conformity assessment procedures *[etc]* ;
  - (b) production methods and processes relating to the product ...

A Recognised Standards Body means CEN, CENELEC, ETSI, or BSI

# How is the list of Designated Standards maintained?

**An initial list of Designated Standards was published in January 2021**

- This appears to list similar Standards to the EU list of Harmonised Standards then in force

**I cannot find any Government announcement on how the list will be maintained**

- However, it appears that this will be by the Office for Product Safety and Standards
  - This is part of BEIS
- It has so far published three notice of update (none relevant to RE-D)
  - <https://www.gov.uk/guidance/designated-standards-new-or-amended-notices-of-publication#history>
  - “Interested parties may object to a publication proposal within 28 days”

**For ETSI standards, it is unclear what triggers an inclusion/update?**

- What is the process/trigger for deciding if a standard should be added or updated?
  - If this is publication in the OJ, then this is effectively taking rules from the EU
  - If it is publication by ETSI, then the Commission might refuse to recognise it
  - What happens if there are objections from GB Interested Parties?

# Some hypothetical questions

## **A HS includes requirements to protect services that are not present in UK**

- e.g. radio astronomy in bands above 100GHz
- Or if, hypothetically, the EU mandated a database spectrum access system for 3.8-4.2GHz
- Would this requirement form part of the Designated Standard?

## **Ofcom makes an allocation for a service ahead of EU or on a national basis**

- e.g. TV White Spaces
- Could UK designate a draft standard at Public Enquiry or Vote stage, or even a TS?

## **The EU regulatory regime for protecting existing services includes a limit on the number of devices placed on the market?**

- e.g. automotive radars at 24GHz
- How would this be addressed in UK?

## **The EU adopts delegated acts under Article 3.3 of RE-D**

- A hypothetical example might be the common charger for mobile phones
- Would UK automatically follow if UK stakeholders believed that this is not justified?
- A few listed Designated Standards also address compliance with Article 3.3 (e) or (g), but there appears to be no applicable UK regulation.

# Conclusions

## **There are 3 distinct regimes for placing radio equipment on the GB and NI markets**

- This is a consequence of the Northern Ireland Protocol of the Withdrawal Agreement
- Some elements are not fully defined
- The process and criteria for inclusion and update of the list of Designated Standards is unclear

## **The process for ETSI to develop Harmonised Standards for RE-D is under strain**

- This will affect the timeliness of availability of Designated Standards

## **Reminder of Disclaimers**

- The content of this presentation is not legal advice
- It is based on information in the public domain (*I am not party to any private industry discussions that might be taking place*).
- It is based on the status in October 2021 (*which may change before the new regimes come into effect on 1st January 2023*)
- ***The slides can be shared, but my comments during presentation were made under Chatham House rules***

# References

## **Radio Equipment Directive**

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0053&qid=1634818776406&from=EN>

## **Withdrawal Agreement and Northern Ireland Protocol**

<https://www.legislation.gov.uk/eut/withdrawal-agreement/contents>

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2020:029:FULL&from=EN>

*(the Northern Ireland Protocol starts on pdf page 104)*

## **The Radio Equipment Regulations 2017**

<https://www.legislation.gov.uk/uksi/2017/1206/contents>

## **The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019**

<https://www.legislation.gov.uk/uksi/2019/696/schedule/29>

## **The Product Safety and Metrology etc. (Amendment) (Northern Ireland) (EU Exit) Regulations 2020**

<https://www.legislation.gov.uk/uksi/2020/1112/schedule/16>

## **Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products**

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32019R1020>

## **BEIS Guidance: Placing manufactured goods on the market in Great Britain**

<https://www.gov.uk/guidance/placing-manufactured-goods-on-the-market-in-great-britain>

## **BEIS Guidance: Placing manufactured goods on the market in Northern Ireland**

<https://www.gov.uk/guidance/placing-manufactured-goods-on-the-market-in-northern-ireland>

## **EU Guidance: Notified Bodies; Protocol on Ireland/Northern Ireland**

<https://ec.europa.eu/growth/tools-databases/nando/index.cfm?fuseaction=ireland.main>

## **BEIS Guidance: Designated standards: radio equipment**

<https://www.gov.uk/government/publications/designated-standards-radio-equipment>