



**Dr Howard Robinson**  
RSTA  
howard@rsta-uk.org

# How CE marking is working for surface treatments

## Introduction

Much has been written about CE marking in recent years so this paper does not intend to rehash what has gone before [1-5], instead it attempts to illustrate how it is working in practice since becoming a legal requirement for some producers and contractors from 1st July 2013. The paper also focuses exclusively on how CE marking is affecting the Road Surface Treatments industry, leaving other trade bodies better placed to comment on Aggregates and Asphalt. In particular the paper provides a little insight into how CE marking is affecting different providers in this sector depending on where they sit in the supply chain and depending on what products they offer or from a client's perspective what they think they need.

## What Products are affected?

Within the Road Surface Treatments sector only Surface Dressing and Slurry Surfacing are affected by CE Marking because they are now regulated by harmonised Product Standards (hENs) namely BS EN 12271 for Surface Dressing and BS EN 12273 for Slurry Surfacing. Other surface treatments are either covered by HAPAS or are proprietary. For example High Friction Surfacing systems, Crack & Joint Repair systems, Grouted Macadams, Cold Lay Asphalts for patching, Asphalt Preservation Systems and Thermal Road Repairs come under HAPAS. Other treatments such as Spray Injection Patching remain as proprietary products or services. Therefore many treatments are unaffected by CE marking in a technical sense although, if some authorities decided to only purchase CE marked products, this would then become a commercial issue for these providers. Re-texturing and Fine Milling likewise are not covered by a hEN; however, the DMRB (Design Manual for Roads and Bridges) provides some design guidance information and this will be further strengthened in the updated HD32 (Concrete Roads) and revised HD31 (Asphalt Roads) when published by the Highways Agency. Geosynthetic products must carry a CE mark because manufacturers need to comply with BS EN 15381:2008; however, there is no hEN covering installation so this is currently covered by Sector Scheme 13. Also in-situ recycling using hydraulic binders is covered by local requirements in guidance

documents published by TRL, namely TRL 386 and TRL 611, so again there is no CE mark requirement.

The aforementioned products not covered by a hEN can seek to obtain a CE mark by another route if required, namely by acquiring an ETA (European Technical Approval). Anyone interested in this route should in the first instance contact the BBA (British Board of Agrément) as the UK representative organisation on EOTA (European Organisation for Technical Assessment). According to the EOTA website the European Technical Assessment (ETA) is a document providing information on the assessment of the performance of a construction product, in relation to its essential characteristics. This definition is provided in the new Construction Products Regulation (CPR) (EU/305/2011) entered into force on 1st of July 2013 in all European Member States and in the European Economic Area. The ETA provides a way for the manufacturer to CE-mark a product.

## How has CE Marking affected Specialist Contractors?

Contractors undertaking end performance contracts to MCHW [6] clause 918 (Slurry Surfacing) or clause 922 (Surface Dressing) have had to obtain a CE mark for their products. This might seem odd when some have argued these treatments are a 'kit of parts' put together on site and not manufactured products in the more traditional sense so should escape CE marking under Article 5 in the CPR which

states "by way of derogation from Article 4(1) and in the absence of Union or national provisions requiring the declaration of essential characteristics where the construction products are intended to be used, a manufacturer may refrain from drawing up a declaration of performance when placing a construction product covered by a harmonised standard on the market where: The construction product is manufactured on the construction site for its incorporation in the respective construction works in compliance with the applicable national rules and under the responsibility of those responsible for the safe execution of the construction works designated under the applicable national rules". However, despite this, BS EN 12271 and BS EN 12273 were published as end performance standards providing a route for CE marking so contractors now have a legal requirement to provide a CE mark with a Declaration of Performance (DoP) against the requirements in the relevant hEN.

To obtain a CE mark and DoP, contractors must operate a quality management system to BS EN ISO 9001, complete their one year TAIT's (Type Approval Installation trials) and have their Factory Production Control (FPC) system audited successfully against the requirements of the relevant hEN by a Notified Body (NB) accredited by UKAS or equivalent body. The hEN's outline the requirements for how TAITs should be undertaken and recorded. There was some confusion initially as to how many TAITs were required, particularly for

Surface Dressings; however, BSI advised RSTA members that a TAIT is required for each type of surface dressing (single, racked-in, double etc) and for different road types. Further guidance is available in PD6689 [7]. Large national contractors seem to have coped fairly well and speedily with obtaining their CE marks; however, it appears that smaller to medium sized contractors required more help and assistance from the RSTA and their certification bodies (CB). Some contractors also had to change to a new CB because the one they were using for certifying their Quality Management System was not an accredited Notified Body for the product in question and had no immediate plans to become one for commercial reasons.

Surface Dressing contractors only undertaking recipe surface dressing to clause 919, which is rare these days, do not need to obtain a CE mark because they are installing 'works' and not a 'product' to the clients design, so responsibility for performance rests not with the contractor but with the highway authority. A contractor cannot be asked to obtain a CE mark and to take responsibility for end performance if the design is undertaken by someone else. More specialist sub-contractors undertaking only part of the process (e.g. spray tanker operators) do not require a CE mark. They are simply applying one constituent (the emulsion binder) in accordance with the Surface Dressing contractors instruction so cannot be expected to take any responsibility for the end performance of the Surface Dressing.

CE marking also affects Sector Scheme 13 for Road Surface Treatments [8] because it means authorities at tender stage can no longer make registration to the scheme a mandatory requirement on Clause 922 End Performance Surface Dressing or 918 Slurry Surfacing contracts. NHSS13 registration will continue as a beacon of best practice and it remains a mandatory requirement for RSTA membership because it sets out minimum standards of training and qualifications for the workforce so is still



recognised as industry best practice. NHSS13 will also continue because it covers other treatments not affected by CE marking such as Re-texturing, Fine Milling, Spray Injection Patching and Geosynthetics & Steel Meshes because these do not have related hEN's.

#### What about DLOs?

Local authority Direct Labour Organisations (DLOs) in the main do not need to worry about CE marking because they undertake 'works' within their local authority boundary so have no requirement to obtain a CE mark unless they decide to tender competitively for contracts either within or outside their authority boundary. If they price a supply contract which is end performance based (i.e. to clause 922) then they will need a CE mark for their product. There has been some confusion about DLOs and what they need to do and some DLOs have decided to obtain a CE mark regardless of the need. Some have also indicated they need to get a CE mark because their local authority client regards CE marking as best practice.

#### Material Suppliers have already been affected

The aggregate and bitumen emulsion manufacturers have been supplying CE marked products in advance of last July when the CPR (Construction Products Regulations) and CE marking came into

full effect. So aggregate producers supply aggregates against the requirements in BS EN 13043 and Emulsion binder manufacturers now supply binders in compliance with BS EN 13808 which was recently re-issued in December 2013. PD6682 provides the UK guidance on aggregates for use in Surface Dressing and Slurry Surfacing.

CE marking has however created difficulties for some producers who have for many years supplied blends of graded aggregates into the micro-surfacing market that do not comply with BS EN 13043 gradings. So in effect they have been supplying proprietary materials however their contractor customers need to purchase aggregates with a CE mark to enable compliance with BS EN 12273! This has required the quarrying companies to find a way around this problem. Simply changing the grading to meet the EN spec can of course create other technical difficulties down the line around retained texture depth which the contractor would prefer to avoid.

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## How is the client side reacting to the CPR and CE marking?

### Councils

The Tameside website, selected at random as one example, has the following headline: *“All Councils in the United Kingdom are required by law to comply with the EU Public Procurement Directives for the advertising and the award of Contracts. Under Council Directive 1999/C 379/08 (31 December 1999) thresholds for contracts awarded by the Works, Supplies and Services Directives are now measured against the Euro and Special Drawing Rights (SDR) to take account of the new Government Procurement Agreement (GPA)”.*

The public procurement directive says public bodies should give priority to purchasing products that have a CE mark. However, after conducting a straw poll amongst major UK contractors in April 2014, very few English and Scottish authorities are asking for CE marked products. So it is becoming clear that it will take some time for CE marking to become embedded and become the norm. The RSTA provide training each year to around 400 individuals working for authorities and contractors and the feedback from these sessions is there is a very low

awareness of CE marking particularly from highway authorities.

### Highways Agency

The HA are responsible for the operation and stewardship of the motorways and major trunk roads in England so they have to be certain that products used to maintain this network are fit for purpose combining the necessary technical performance with adequate service life. CE marked products come with a Declaration of Performance based on a one year TAIT (Type Approval Installation Trial) so the HA have to consider if evidence based on one year’s performance on the road provides sufficient confidence. If not, then products assessed over a longer time frame will be considered and used instead, for example Clause 942 materials which come under HAPAS where a two year period of on the road assessment is undertaken.

**CE marking has certainly captured the imagination of the specialist contracting community and raised a concerted response over the past 2-3 years**

### Term Maintenance Contractors

Feedback from RSTA contractor members also indicates the TMCs (Term Maintenance Contractors) who are members of the HTMA (Highways Term Maintenance Association) and who collectively maintain 80% of UK roads or 400,000 km of road network are also not yet asking their specialist sub-contractors to provide evidence of CE marked products.

### Summary

So in summary, CE marking has certainly captured the imagination of the specialist contracting community and raised a concerted response over the past 2-3 years with RSTA playing its part by organising a number of seminars to advise members on what they need to do to prepare. Contractors have in turn, despite a slow start, undertaken the necessary TAITs and obtained their CE marks on the understanding; this become a legal requirement and a trading standards issue from 1st July 2013. However information received from RSTA contractor members suggests CE marking is not currently being asked for by authorities and it will take some time probably another couple of years before highway authorities collectively start demanding this consistently from their supply chain. Hopefully what could have been a very short paper has helped to illustrate the current situation regarding how CE marking is working in the Road Surface Treatments sector.

Further information on road surface treatments is available at [www.rsta-uk.org/publications.htm](http://www.rsta-uk.org/publications.htm) [9] and in the DMRB HD37 and HD32 [10].

## References and Further Reading

1. Declaration of Performance and CE Marking  
[ec.europa.eu/enterprise/sectors/construction/declaration-of-performance/index\\_en.htm](http://ec.europa.eu/enterprise/sectors/construction/declaration-of-performance/index_en.htm)
2. Official Journal of the European Union  
REGULATION (EU) No 305/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC.
3. Guidance Note on the Construction Products Regulation, April 2012 - prepared by the Construction Products Association (CPA), the British Board of Agrément (BBA), British Standards Institution (BSI) and FBE Management Limited in consultation with the Trading Standards Institute (TSI).
4. CPR and CE Marking, John Bradshaw Bullock, Institute of Asphalt Technology Yearbook 2013 pp 32-35.
5. Selection of Surfacing for Highway Pavements - Guidance for Local Authority Engineers, published by ADEPT, December 2013 pp 30-31.
6. Manual of Contract Documents for Highway Works. The Stationery Office, London  
*Volume 1: Specification for Highway Works (MCHW 1)*  
Available at [www.dft.gov.uk/ha/standards/mchw/vol1/](http://www.dft.gov.uk/ha/standards/mchw/vol1/)  
*Volume 2: Notes for Guidance on the Specification for Highway Works (MCHW 2)*  
Available at [www.dft.gov.uk/ha/standards/mchw/vol2/](http://www.dft.gov.uk/ha/standards/mchw/vol2/)
7. PD6689 Surface treatments - Guidance on the use of BS EN 12271 and BS EN 12273 published in 2009 by BSI.
8. National Highway Sector Scheme 13 for the supply and application of surface treatments to road surfaces. February 2013 UKAS Issue 3, available at [www.ukas.com](http://www.ukas.com)
9. RSTA Codes of Practice and other related publications can be found at [www.rsta-uk.org/publications.htm](http://www.rsta-uk.org/publications.htm)
10. Design Manual for Roads and Bridges. The Stationery Office, London.  
HD31/94 Maintenance of Bituminous Roads (DMRB 7.4.1)  
HD32/94 Maintenance of Concrete Roads (DMRB 7.4.2)  
HD 37/99 Bituminous surfacing materials and techniques (DMRB 7.5.2)  
*Note: HD31, HD 32 and HD37 are currently under revision.*  
Available at [www.dft.gov.uk/ha/standards/dmrb/](http://www.dft.gov.uk/ha/standards/dmrb/)

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