EXPLANATORY MEMORANDUM TO

THE PRODUCT SAFETY AND METROLOGY ETC. (AMENDMENT ETC.) (UK(NI) INDICATION) (EU EXIT) REGULATIONS 2020

2020 No. XXXX

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The two main purposes of this instrument are firstly to ensure that, with respect to product safety and metrology, the Protocol on Ireland/Northern Ireland in the Withdrawal Agreement ("the Protocol") is implemented, including provisions with regard to the UK(NI) Indication and unfettered access for qualifying Northern Ireland goods. Its second main purpose is to re-correct deficiencies arising out of the United Kingdom's withdrawal from the European Union.

2.2 This instrument does this by setting out the form of the UK(NI) Indication in Schedule 1 and by making amendments to EU Exit legislation, which is not yet in force, as well as making amendments to a number of pieces of product safety and metrology legislation (which covers products ranging from lifts and machinery to toys and cosmetics) as they apply in Northern Ireland on the one hand and Great Britain on the other. The instrument will complement changes being made by other (negative) statutory instruments which will provide a product safety and metrology framework for Northern Ireland that meets the terms of the Protocol.

Explanations

What did any relevant EU law do before exit day?

2.3 Before exit day, the relevant EU law was intended to ensure that products were safe, compliant and accurate to use and would not cause harm to consumers, workers and others. It also ensured that products identified as unsafe or non-compliant could be removed from the market.

2.4 In preparation for a potential no deal UK exit from the EU, the Department laid **four statutory instruments**, the most substantial of which was the Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (the "*Product Safety SI*") in March 2019. The overall objective was to ensure that EU-derived product safety and metrology legislation continued to work effectively after the UK's withdrawal from the EU and that there would be a functioning legal in the event of the UK leaving the EU without a Withdrawal Agreement. To do this the Product Safety SI will amend (with effect from 'IP completion day'- the legal wording for the end of the Transition Period (i.e. 11pm on 31st December 2020) over 30 pieces of product safety and metrology legislation. It corrects deficiencies ranging from the simple removal of invalid references (such as to EU bodies and institutions) to setting out the need for a domestic system of conformity assessment rooted in UK, rather than EU,

law and institutions. It also introduces a UK conformity mark to be used when goods are placed on the UK market and sets out the form of the mark as a 'UKCA' marking.

2.5 The Product Safety SI also includes provisions to allow continued recognition of goods meeting EU requirements, including conformity assessment by bodies in the EU and the CE marking, in line with the then Government's policy. This continued recognition of goods meeting EU requirements was intended to be for a time limited period, which is not specified in the Product Safety SI.

2.6 The three other earlier instruments which were laid to implement a no deal EU Exit for product safety and metrology are:

a) The Product Safety, Metrology and Mutual Recognition Agreement (Amendment) (EU Exit) Regulations 2019 (the "*MRA Regulations*"). Amongst other things, the MRA Regulations made amendments necessary arising out of the agreed extension of exit day - from 31 October 2019 to 31 January 2020. The MRA Regulations also extends transitional provisions to imports from Switzerland and expressly implements certain provisions of the mutual recognition agreement between the EU and Switzerland relating to importers and authorised representatives.

b) The Weighing & Measuring Equipment & Meters (Amendment of Secondary Legislation) (EU Exit) Regulations 2018 - corrects minor deficiencies in GB metrology legislation.

c) The Metrology, Health & Safety and Product Safety (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 - corrects similar deficiencies in NI metrology legislation.

2.7 Nearly all the provisions in these four instruments were originally scheduled to come into force on exit day, but their commencement date has since been moved to reflect the introduction of a Transition Period ("TP") by provisions contained the European Union (Withdrawal Agreement) Act 2020 and their coming into force dates are now with reference to IP completion day.

Why is it being changed?

2.8 Pursuant to the Withdrawal Agreement, the UK exited the EU on 31 January 2020 and entered an 11-month TP. During the TP, the UK continues to follow the EU's rules. For example, CE marking continues to be required in the UK with no option or requirement for UK marking.

2.9 At the end of the TP, the four instruments referenced above, including the Product Safety SI, will come into force. However two of the four (the Product Safety SI and the MRA Regulations) need amending before commencement to: take account of the Withdrawal Agreement; implement the Protocol; and to reflect the current Government's policies for transitional provisions and limiting the continued recognition on the GB market of goods that meet EU requirements.

2.10 These amendments will be made through a series of six statutory instruments, four of which have already been laid as below:

a) The Product Safety and Metrology etc. (Amendment to Extent and Meaning of Market) (EU Exit) Regulations 2020 (the "*Extent & Meaning SI*") - makes sure that the majority of amendments made in the earlier EU Exit SI only

come into force for GB, leaving legislation for Northern Ireland unamended and thereby largely implementing the relevant EU law in NI.

b) The Product Safety and Metrology (Amendment) (EU Exit) Regulations 2020 (the "*Exit Day SI*") - changes references to EU Exit day to read "IP Completion Day" (the legal wording for the end of the TP i.e. 11pm on 31st December 2020).

c) The Pressure Vessels (Amendment) (Northern Ireland) (EU Exit) Regulations 2020 (the "*Pressure Vessels SI*") - implements the Protocol by ensuring EU product safety legislation, in respect of simple pressure vessels and pressure equipment, continues to apply in NI, whilst recognising that the UK (and therefore NI) is no longer a member State of the EU. This SI acts as a template for changes to other product and metrology sectors that will be made in another negative instrument being laid as part of this package of instruments.

d) The Product Safety and Metrology etc. (EU Withdrawal and EEA EFTA Separation Agreements) (EU Exit) Regulations 2020 - in order to support the implementation of Part Three of the Withdrawal Agreement (Separation Provisions), this instrument enables the Secretary of State to act as a market surveillance authority for the purposes of exchange of information on market surveillance relating to goods placed on the market before TP end with the European Commission and EFTA Surveillance bodies as required by the Withdrawal Agreements.

2.11 The remaining two statutory instruments yet to be made include the affirmative instrument that is the subject of this Explanatory Memorandum (The Product Safety and Metrology etc. (Amendment etc.) (UK(NI) Indication) (EU Exit) Regulations) and a separate negative instrument, the Product Safety and Metrology etc. (Amendment) (Northern Ireland) (EU Exit) Regulations 2020. The negative instrument implements Protocol provisions in the same way as the Pressure Vessels SI (laid on 2 July) and noted in paragraph 2.10(c) above, but extends them to other product sectors covering industrial and consumer goods and measuring instruments.

What will it now do?

2.12 The instrument will implement changes to both (a) earlier EU Exit Regulations and (b) to underlying product safety and metrology regulations to make sure they implement the Withdrawal Agreement and the Protocol, as well as to make sure they effectively correct deficiencies. The Regulations being amended are listed below.

Changes to earlier EU exit regulations

2.13 The three earlier EU Exit instruments that this instrument amends are:

a) The Product Safety SI 2019 (see paragraphs 2.4 and 2.5 above)

b) The MRA Regulations 2019 (see paragraph 2.6(a) above) and

c) The Exit Day SI 2020 (see paragraph 2.10(b) above)

Changes to the underlying regulations

2.14 This instrument also makes amendments to the following Regulations in respect of the UK(NI) marking or a register of UK Notified bodies in respect of Northern Ireland (or, in some cases, both):

a) The Measuring Container Bottles (EEC Requirements) Regulations 1977

b) The Noise Emissions in the Environment by Equipment for Use Outdoors Regulations 2001

c) The Supply of Machinery (Safety) Regulations 2008

d) The Aerosol Dispensers Regulations 2009

e) The Toys (Safety) Regulations 2011

f) The Pyrotechnic Articles (Safety) Regulations 2015

g) The Electromagnetic Compatibility Regulations 2016

h) The Simple Pressure Vessels (Safety) Regulations 2016

i) The Lifts Regulations 2016

j) The Pressure Equipment (Safety) Regulations 2016

k) The Non-Automatic Weighing Instruments Regulations 2016

l) The Measuring Instruments Regulations 2016

m) The Recreational Craft Regulations 2017

n) The Radio Equipment Regulations 2017

o) The Personal Protective Equipment (Enforcement) Regulations 2018

p) The Gas Appliances (Enforcement) and Miscellaneous Amendments Regulations 2018

2.15 More detail on what this instrument does and the changes made is provided in section 7 of the Explanatory Memorandum.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument varies between provisions. For the purposes of Standing Order No. 83P, this instrument does not apply to England only, or England and Wales only.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument varies between provisions.

4.2 Parts 1 and 2 of this instrument extend to England, Wales, Scotland and Northern Ireland. Part 3 extends to Northern Ireland only. Any amendment or revocation

made by Parts 4, 5 and 6 has the same extent as the provisions being amended or revoked. Part 7 extends to England, Wales and Scotland only.

4.3 The territorial application of this instrument is the same as its extent.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State (Minister for Small Business, Consumers and Labour Markets), Paul Scully, has made the following statement regarding Human Rights:

"In my view the provisions of the Product Safety and Metrology etc. (Amendment etc.) (UK(NI) Indication) (EU Exit) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 The purpose of product safety and metrology legislation is to ensure that products placed on the market are safe or accurate and compliant. To this end, it places various obligations on economic operators throughout the supply chain. This includes manufacturers' authorised representatives and importers, both of which must be established in the EU under EU law. Much of the legislation amended by the Product Safety SI sets out a framework for a wide range of products from toys to simple pressure vessels developed at EU level which provides that products must meet certain essential safety and accuracy requirements. For some products there is then a process by which the conformity of the product is assessed by third party conformity assessment bodies, which under EU law are known as Notified Bodies, and which also, under EU law, must be established in the EU. After the product has been assessed, it must be marked with the CE marking.

6.2 The Product Safety SI amends these provisions to provide (amongst other things) that after the end of the TP, importers must be established in the UK. The Product Safety SI (as amended by the Exit Day SI) also sets out that importer labelling obligations can be met by placing the information on documents accompanying the product, rather than a product itself, for a limited period from IP completion day where the product is imported from an EEA state or from Switzerland. The Product Safety SI (again as amended by the Exit Day SI) also provides that authorised representatives established in the EEA prior to IP Completion day can continue to be authorised representatives for the market of GB after IP Completion day (but authorised representatives established after IP Completion day must be established in the UK). Furthermore, the Product Safety SI makes UK Notified Bodies "Approved Bodies" and any UK Notified Bodies automatically become Approved Bodies in respect of the activities for which they were notified. The other main change brought about by the Product Safety SI is that once the legislative requirements as they apply in GB are met (including, where relevant, conformity assessment by an Approved Body) the UK marking must be affixed to the product (rather than the CE marking, which can only be affixed to products that meet the EU requirements).

6.3 In order to ensure the continued flow of products on to the market in GB, the Product Safety SI introduced provisions allowing for the recognition of products meeting EU requirements, including being marked with the CE marking.

7. Policy background

What is being done and why?

7.1 The two main purposes of this instrument are firstly to amend earlier product safety and metrology instruments to ensure that the Protocol is implemented, including provisions with regard to the UK(NI) Indication and unfettered access for qualifying Northern Ireland goods. Its second main purpose is to re-correct deficiencies arising out of the United Kingdom's withdrawal from the European Union.

7.2 The instrument will support implementation of the UK's own product safety and metrology regime from 1st January 2021 and end the automatic acceptance of products which comply with the EU product safety and metrology legislation 12 months from TP end (except in Northern Ireland, which will continue to follow certain requirements of EU law as set out in the Protocol). It will ensure the legislation continues to provide adequate protection to UK consumers, so unsafe products can continue to be removed from the market and consumers have reassurance about the safety and accuracy of products.

7.3 The changes in this instrument include:

a) Implementing the UK's approach on 'qualifying Northern Ireland goods', ensuring that qualifying Northern Ireland goods (as defined in regulations made under section 8(C)(6) of the European Union (Withdrawal Agreement) Act 2018) have unfettered access to the rest of the UK market for the products within scope of this instrument;

b) Setting a time-limit on the continued recognition of goods that meet EU requirements (such as CE marking). More detail on this is set out in paragraphs 7.12 to 7.14;

c) The visual aspects of the UK(NI) indication which must in certain circumstances accompany the CE marking for goods placed on the market of Northern Ireland and penalties for misuse. More detail on this is in paragraphs 7.4 to 7.8;

d) Changes to correct deficiencies previously covered in the earlier 2019 statutory instruments and to capture updates made during the TP to EU legislation; and

e) Providing that the Secretary of State can designate an Approved Body for pyrotechnics that is not based in the UK. More detail is in paragraph 7.13.

7.4 Part 2 and Schedule 1 of this instrument introduces the form of UK(NI) indication. If a manufacturer wants to supply a product for the Northern Ireland market it will need to manufacture that product to EU requirements. If that product requires third party conformity assessment under the relevant EU legislation, and if a UK Notified Body is used to do that, then they will need to apply the UK(NI) indication which must accompany the CE or other relevant conformity marking.

7.5 The intention is that any legislation that refers to the UK(NI) indication should refer to the form of the mark as set out in Schedule 1, unless there is express provision to the contrary. The relevant provisions extend to the whole of the UK and are to come into force at the end of the TP.

7.6 The UK(NI) indication will indicate that a UK notified body has been used to test against EU requirements. Such goods may be placed on the Northern Ireland market but not sold in the EU.

7.7 Part 3 and Schedule 2 of this instrument amends legislation but only changes the law in Northern Ireland, to make clear when the UK(NI) indication needs to be affixed and how and where it should be used. These changes come into force at the end of the TP (i.e. which will last until 11 p.m. on 31 December 2020).

7.8 In UK product safety legislation the misuse of conformity marks, such as the CE and UKCA markings, can ultimately lead to civil sanctions (up to an unlimited fine) and criminal sanctions (in the form of imprisonment). This instrument adopts a broadly similar approach to the misuse of the UK(NI) indication but the penalty is restricted to a fine. Where the provisions of the UK(NI) indication are not met, the enforcing authorities must where available issue compliance notices requiring the non-conformity to be fixed and then can only take further action where the terms of these notices are not complied with within the relevant period. Should these notices not be sufficient to correct the misuse of the mark, then the authorities can take further action which can ultimately result in a sanction including a maximum fine of up to £5,000 for each offence (the current limit of level 5 on the standard scale in Northern Ireland). In practice, we expect these criminal sanctions to be used rarely. There are several stages available to market surveillance authorities, which focus on helping businesses comply with the rules, before sanctions are applied.

7.9 Schedule 2 makes provision about UK notified body identification numbers. This provision sets out that the Secretary of State must ensure that UK notified bodies are given identification numbers. This may either be through the EU Commission supplying identification numbers for notified bodies based in the United Kingdom certificating for the NI market, or by the Secretary of State supplying these identification numbers (which must then sometimes be affixed to the product and must always be given in the Declaration of Conformity, which is formal documentary evidence held by the manufacturer or their representative that the product complies with the relevant essential requirements).

7.10 Part 4 and Schedule 3 amends the Product Safety SI to implement the following:

a) Amend existing transitional provisions for importer labelling, to provide a longer lead in time for business (from 18 to 24 months) and provide a similar transitional provision for the application of the UK marking;

b) Provide that the automatic recognition of goods meeting EU requirements will expire 12 months after the end of the TP (except for qualifying Northern Ireland goods – see below);

c) Make provision for access for "qualifying Northern Ireland goods" to the market of GB; and

d) Omit the existing definitions of "authorised representatives" substituted by the Product Safety SI; a new definition is being introduced to the underlying regulations making clear that authorised representatives will need to be based in the United Kingdom after TP completion day.

7.11 This instrument further updates certain amendments that were contained in the Product Safety SI to correct deficiencies that would arise in UK law at the end of the TP. The Product Safety SI created a framework for a UK marking to be affixed to

products (instead of the CE marking) to indicate conformity with the requirements of the legislation in GB. This instrument updates that framework to provide for easements over a period of 24 months from the end of the TP, allowing the UK marking to be affixed to a label affixed to the product or to a document accompanying the product. This aligns the lead-in time for business with that being given for importer labelling, as detailed above.

7.12 The Product Safety SI provided for recognition of products that meet EU requirements, allowing products which satisfy the EU requirements post end of the TP to be deemed to satisfy the requirements in GB, so that products that lawfully bear the CE marking or other conformity markings (such as the reverse epsilon "3") will be able to circulate on the market, as well as those that lawfully bear the UK marking. The Government's intention was that this recognition would be time limited, however this time limited period was not expressly specified in the earlier legislation. In line with Government policy, this instrument introduces a "sunset provision", that is a provision which sets out the expiry of the recognition of products that meet the EU requirements (other than those that are also qualifying Northern Ireland goods – see below).

7.13 This sunset provision allows for recognition of marking to continue for a period of 12 months from the end of the TP. In respect of pyrotechnic articles (such as fireworks) the instrument includes provision allowing for the appointment of an Approved Body (which are bodies that are able to provide conformity assessments for products to the UKCA requirements), to be based in any country (that is the UK, Europe, or the rest of the world). It also permits that they can rely on sub-contractors or subsidiaries to be able to meet the approved body requirements, even if they do not meet them all themselves. This exceptional treatment is in recognition that the pyrotechnic sector does not have a Notified Body (therefore no automatically ascribed Approved Body at the end of the TP) which is based in the UK and that there may not be enough demand to support one in the UK going forward.

7.14 Some of the amendments in the Product Safety SI included provision to automatically recognise the first stage (design stage) conformity assessment procedure for certain products (these are usually products that have a design stage conformity assessment procedure but then are installed on site where they have a second, or production stage assessment procedure). This instrument contains provisions sunsetting these provisions as well.

7.15 Schedule 3 also includes provision for implementing unfettered access to the GB (GB) market for "qualifying Northern Ireland goods". Qualifying Northern Ireland Goods will be defined in regulations made under section 8(C)(6) of the European Union (Withdrawal) Act 2018 ('The Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020') that were laid in Parliament on 7 October 2020. The Schedule 3 provisions mean these qualifying goods can be placed on the GB market as long as the goods and the relevant economic operators' duties in respect of those goods, meet the requirements of the NI legislation (which because of the Protocol must follow EU regulation) and the importer to GB carries out required checks.

7.16 NI manufacturers can therefore continue to make products in line with EU requirements and place them on the market in GB. For example, an NI manufacturer of machinery will be able to place CE or CE+ UK(NI) marked machinery on the GB market without taking any further steps.

7.17 Businesses who are distributors or wholesalers in Northern Ireland of products manufactured or imported into the EU which then move to GB will take on the legal obligations associated with placing those products on the market in GB in the same way as any other business placing goods on the GB market. These obligations including providing their contact details and holding any necessary technical documentation about the product.

7.18 For example, an NI business that imported Personal Protective Equipment (PPE) from the EU and acted as a distributor in NI would be required to take on the role of an importer if it sought to place that PPE product on the GB market. It would need to provide its contact details alongside the product, to request the EU Declaration of Conformity and technical documentation from the relevant EU economic operator, for instance a manufacturer in Germany, and would have responsibility for making sure that the product complied with the (EU) product safety rules. For NI, the business would remain a distributor, and so would carry some, but not all, of these obligations.

7.19 In some situations, regulators need to know about the composition of products before they are placed on the market. Businesses placing qualifying NI cosmetic products on the GB market will need to notify regulators about the contents of those products, in the same way that they inform EU regulators. The requirement for NI businesses to notify the GB regulator, therefore, makes sure GB regulators have the same important information about substances in cosmetic products which may be used in ways other than intended and cause harm within cosmetic products on the GB market.

7.20 In order to implement unfettered access for qualifying NI goods, this instrument amends the existing definition of "importer" for GB facing legislation purposes to capture a person based in NI who places a product on the GB market from the EEA. This is needed because that person will not be an importer for EU or NI purposes.

7.21 This importer definition will not extend to economic operators who move individual goods to GB either from the EU or from NI, where those goods were already on the EEA market before the end of the TP. The same applies to economic operators moving these goods from GB to NI. In both cases the businesses will keep the status of the economic operator they had when the goods were first placed on the EEA or UK markets so if they were distributors, products on the market will not need to be re-labelled to show their (importer) contact details, although other requirements, such as the need to have a Responsible Person may still apply. This is because of the direct applicability of Article 41 of the Withdrawal Agreement (and the equivalent Article 39 of the EEA EFTA Separation Agreement) read with section 7A(3) (and 7B) of the European Union (Withdrawal) Act 2018. We will issue guidance that makes clear that existing, individually identifiable goods legally placed on the EEA market before the end of the TP may continue to circulate on the GB market until they reach their end-user. Any inconsistent provisions under the current Regulations which place requirements on importers, for example the provisions which set out the recognition of goods meeting EU requirements, and the provisions on Northern Ireland qualifying goods, are therefore overridden with respect to goods that are on the EEA market prior to IP completion day and come on to the market of GB after IP completion day.

7.22 Additionally, Schedule 3 omits the definitions of "authorised representatives" substituted by the Product Safety SI, leaving them as they are in the underlying regulations. An authorised representative is an economic operator that a manufacturer can appoint to carry out certain activities on their behalf including holding technical documentation to provide to market surveillance authorities. These definitions are

then re-amended by Schedule 5 of this instrument to make any reference to the "EU" to read as a reference to "UK". This is to implement the policy that from 1 January 2021, authorised representatives must be based in the UK. Authorised representatives are not, according to our evidence, commonly used and for the product sectors covered we therefore do not judge there to be any significant impact with this approach.

7.23 Part 5 omits the regulations of the MRA Regulations that introduce some amendments to provisions in the Product Safety SI concerning authorised representatives. This is connected to the changes detailed in the paragraph above, to ensure the current definition is omitted so that the Schedule 5 provisions of this instrument can serve to provide the new required definition. Similarly, Part 6 and Schedule 4 amends the Exit Day SI to omit the provisions that amend the definition of "authorised representative" in the Product Safety SI.

7.24 Schedule 4 also amends the Exit Day SI, to address an error in the 2020 Regulations as to the coming into force date of regulation 5. Additionally, it makes another minor amendment to reflect the proper title of a piece of legislation that is amended by the Exit Day SI. Part 7 and Schedule 5 involve the amendments to the definition of "authorised representative" as set out in paragraph 7.22 above.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the powers in section 8(1) and 8(C)(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union and to implement the Protocol. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 There are no plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

10.1 A formal consultation has not been completed for this instrument. The Department chose not to undertake a public consultation given that its provisions are limited to addressing failures in retained EU and UK law to operate effectively as a result of EU Exit and to and implement the requirements of the Withdrawal Agreement with the EU, and in order to minimise any sensitivities with ongoing negotiations with the EU.

10.2 The Department has undertaken an informal engagement with a cross-representation of stakeholders, including manufacturers, trade associations, conformity assessment bodies and other industry representatives across the product areas covered by this instrument. This has been done via structured interviews. The main interest of stakeholders has been the establishment of a UK(NI) marking, the ending of recognition of CE marked goods in GB, and what lead-in time business will have to implement and adapt to any new marking requirements. The Department has also been involved in discussions of the Northern Ireland Office's Business Engagement Forum, which has held several discussions with NI business stakeholders on the implementation of unfettered access. Technical input required for this instrument has

been provided by the Office for Product Safety and Standards, the Health and Safety Executive and interested government bodies.

11. Guidance

11.1 There is guidance on the UK's product safety and metrology framework, provided to support businesses, enforcement agencies and consumers, which can be found on the Office for Product Safety and Standards section of the GOV.UK website (https://www.gov.uk/government/organisations/office-for-product-safety-and-standards) and also on the Business Companion website (https://www.businesscompanion.info/en/in-depth-guides).

11.2 The Department published guidance on GOV.UK on the 3 September 2020 for businesses placing products on the GB market from 1 January 2021 (https://www.gov.uk/guidance/placing-manufactured-goods-on-the-market-in-great-britain-from-1-january-2021) and on how to use the UKCA marking (https://www.gov.uk/guidance/using-the-ukca-mark-from-1-january-2021).

11.3 Additionally, guidance was published on 7 August 2020 on moving goods under the terms of the Protocol, as well as placing goods on the NI market (https://www.gov.uk/government/publications/moving-goods-under-the-northern-ireland-protocol/moving-goods-under-the-northern-ireland-protocol-introduction). Further guidance on the UK(NI) mark and unfettered access will be published in due course.

12. Impact

12.1 The analysis developed to inform this instrument demonstrated that there are limited/negligible additional costs to business associated with the specific provisions made in this instrument.

12.2 There is no, or no significant, impact on charities, voluntary bodies or the public sector.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise the regulatory burdens on small businesses.

13.3 The legal requirements on the industry do not differentiate between businesses in terms of their size, they are dependent on the type and nature of product being produced and placed on the market. Therefore, we are unable to take any mitigating actions to reduce burdens on small business.

14. Monitoring & review

14.1 The Department does not intend to monitor this instrument. However, some of the underlying domestic regulations include review clauses to review the regulatory provisions made under them.

14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 James Baugh at the Department for Business, Energy and Industrial Strategy, Telephone: 020 7215 6823 or email: OPSSlegislation@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Rebecca Bradfield, Deputy Director for Regulatory Capability, the Office for Product Safety and Standards, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Paul Scully, Parliamentary Under Secretary of State (Minister for Small Business, Consumers and Labour Markets), at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

1.1 The Parliamentary Under Secretary of State (Minister for Small Business, Consumers and Labour Markets), Paul Scully, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Product Safety and Metrology etc. (Amendment etc.) (UK(NI) Indication) (EU Exit) Regulations 2020 does no more than is appropriate".

1.2 This is the case because this instrument does no more than is necessary to deliver a functioning statute book for Great Britain and support implementation of the requirements of the Northern Ireland Protocol. It amends earlier product safety and metrology instruments which the Department originally prepared for exiting the EU without a Withdrawal Agreement, to reflect the fact that the UK has now left the EU with a Withdrawal Agreement and entered a TP which will last until 11 p.m. on 31 December 2020. It will help ensure that we have an effective UK framework for product safety and metrology at the end of the TP, which will continue to provide reassurance to business and consumers and ensure there is no reduction in product safety or accuracy, or consumer protections.

2. Good reasons

2.1 The Parliamentary Under Secretary of State (Minister for Small Business, Consumers and Labour Markets), Paul Scully, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

2.2 We are making appropriate amendments to earlier legislation to prepare for the end of the TP. The amendments are limited to achieving that purpose.

3. Equalities

3.1 The Parliamentary Under Secretary of State (Minister for Small Business, Consumers and Labour Markets), Paul Scully, has made the following statement(s):

"The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts".

3.2 The Parliamentary Under Secretary of State (Minister for Small Business, Consumers and Labour Markets), Paul Scully, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I, Paul Scully, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010".

"The Equalities Acts do not extend to Northern Ireland, and as measures of the Product Safety and Metrology etc. (Amendment etc.) (UK(NI) Indication) (EU Exit) Regulations 2020 extend to Northern Ireland, I have given equivalent due regard to the need to eliminate discrimination, harassment, and victimisation in Northern Ireland".

4. Explanations

4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.