

EXPLANATORY MEMORANDUM TO
THE CONFORMITY ASSESSMENT (MUTUAL RECOGNITION AGREEMENTS)
AND WEIGHTS AND MEASURES (INTOXICATING LIQUOR) (AMENDMENT)
REGULATIONS 2021

2021 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 instrument makes provision to give effect to mutual recognition agreements (“MRAs”) between the UK and certain countries (“third countries”). It ensures that specific products assessed by bodies in these countries recognised under the MRAs can be placed on the market in Great Britain. It enables the Secretary of State to designate and monitor UK conformity assessment bodies to assess products against the other parties’ requirements.
- 2.2 The instrument also implements Annex 2-D to the UK-Japan Comprehensive Economic Partnership Agreement (“CEPA”), by amending legislation to allow single distilled shochu (a traditional Japanese spirit drink that is single distilled, produced by pot still and bottled in Japan) to be made up in new quantities of 900 ml for supply in Great Britain, in addition to existing quantities of 720 and 1800 ml.

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 regulations.
- 3.3 For all regulations the territorial application includes Scotland and for some regulations it includes Northern Ireland (see regulation 2).

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument varies between regulations. There are 4 regulations that apply to England and Wales and Scotland, and the remaining regulations apply to England and Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument is the same as its extent.

5. European Convention on Human Rights

- 5.1 The 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 Conformity Assessment (Mutual Recognition Agreements) and Weights and Measures (Intoxicating Liquor) (Amendment) Regulations 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument makes certain changes in relation to UK trade agreements. This is the first use of the power under sections 2 and 4 of the Trade Act 2021. Firstly, it will give legal certainty that, where the UK has signed MRAs where the third country and the European Union were signatories to an international trade agreement immediately before exit day, the UK will recognise products assessed against certain regulations of Great Britain by designated bodies based in those countries. Secondly, it will provide an exception to mandatory specified quantities for prepacked spirit drinks to permit single distilled shochu in an additional bottle size to be supplied on the market in Great Britain.
- 6.2 The purpose of product safety legislation is to ensure that products that are placed on the market are safe, accurate and compliant with relevant technical requirements. To this end, legislation places obligations on economic operators throughout the supply chain (manufacturers, importers, distributors and, in certain product legislation, authorised representatives appointed by manufacturers). Generally, there is a requirement that the product is assessed to demonstrate compliance with the relevant requirements (conformity assessment), sometimes by a third party, prior to being placed on the market. Third party conformity assessment can be performed by conformity assessment bodies (“CABs”) that are approved by the Secretary of State for products that will be placed on the market in Great Britain (known as “approved bodies”), or that are notified to the European Commission for products that will be placed on the market in Northern Ireland (known as “notified bodies”).
- 6.3 The instrument covers MRAs the UK has agreed with the United States of America, Australia, New Zealand, Canada, the Republic of Korea, and Japan. The MRAs the UK has negotiated are in (or incorporate) similar or identical terms to those the EU had with these third countries immediately before exit day (the “EU MRAs”).
- 6.4 The MRAs allow certain CABs, recognised by the UK under the MRAs, in these third countries to carry out conformity assessment, for certain product sectors (specified in the MRAs, in most cases by reference to legislation) against the technical requirements of Great Britain. The instrument provides that conformity assessment by these recognised CABs should be treated as if it had been carried out by an approved body. Products positively assessed by these recognised CABs can therefore be placed on the market in Great Britain. To the extent that these Regulations contain provision in the areas of the protection of human or animal life or health or environmental protection, the provision is consistent with maintaining UK levels of statutory protection in that area.
- 6.5 The instrument (regulation 5) provides that the Secretary of State may assign a recognised CAB an identification number and compile a publicly available register of these CABs. This register will ensure that market surveillance authorities and economic operators can see which recognised CABs can be used to place products on the market in Great Britain. Additionally, the Secretary of State may maintain a publicly available register of accreditation bodies established in Canada and recognised by the UK under the Canada MRA as competent to accredit CABs in relation to the relevant regulations in Great Britain.

- 6.6 Regulation 7 provides that the Secretary of State (or a person authorised to act on behalf of the Secretary of State) may disclose relevant information to the third country, if required by the relevant MRA. Disclosure is to be made in accordance with data protection legislation.
- 6.7 The instrument provides for products assessed by recognised third country CABs to be placed on the market in Great Britain. For products placed on the market in Northern Ireland, third country CABs will be recognised under the EU's MRA with the relevant third country, in accordance with the Northern Ireland Protocol.
- 6.8 The instrument gives the Secretary of State the power to designate, for the purpose of the MRAs, CABs in the United Kingdom for those products that fall under the annexes and appendices of the MRAs listed in Schedule 2. The instrument provides the circumstances under which CABs in the UK will be designated to carry out conformity assessment against the technical requirements of the third country under the MRA. In making the designation, the Secretary of State may accept accreditation from the United Kingdom Accreditation Service ("UKAS") attesting that a CAB is capable of acting as a designated body as sufficient evidence of the same. In the case of designation of a CAB under the Canadian MRA, if UKAS accreditation is not accepted under the MRA, the Secretary of State may accept accreditation from an accreditation body recognised by Canada. Furthermore, this provision also specifies that, if necessary, the Secretary of State can restrict, suspend, or withdraw any designation of a UK CAB should it no longer fulfil the requirements under the MRA or should the CAB request that its designation be withdrawn. The Secretary of State may compile a register of the CABs designated.
- 6.9 Part 3 of the instrument concerns amendments to legislation to implement Annex 2-D to the UK-Japan CEPA in relation to bottle sizes of a type of traditional Japanese spirit drink, single distilled shochu (which is single distilled, produced by pot still and bottled in Japan).
- 6.10 The Weights and Measures (Intoxicating Liquor) Order 1988 (the "1988 Order") provides for specified quantities by which spirit drinks must be made up in Great Britain. Those specified quantities do not expressly include 720 ml, 900 ml and 1800 ml, but single distilled shochu in bottles of 720ml and 1800ml are permitted to be placed on the EU market pursuant to Article 24a of Regulation (EC) No 110/2008, which implemented commitments in the EU-Japan Economic Partnership Agreement and which became retained EU law applying in Great Britain on IP completion day. Part 3 of the instrument extends only to Great Britain since, for as long as it is in force, the Northern Ireland Protocol provides that Northern Ireland must follow EU law in relation to specified quantities of prepacked spirit drinks, namely Directive 2007/45/EC, implemented by amendments to the Weights and Measures (Intoxicating Liquor) Order (Northern Ireland) 1989. The derogation for single distilled shochu in 720 ml and 1800 ml quantities is in Article 24a of Regulation (EC) No 110/2008 as it applies in the EU.
- 6.11 Regulation 8 amends the 1988 Order to provide an exception to the specified quantities for prepacked spirit drinks for single distilled shochu in containers of 720 ml, 900 ml and 1800 ml.
- 6.12 Regulation 9 revokes Article 24a of Regulation (EC) No 110/2008 as it exists in retained EU law in Great Britain. That provision is redundant in light of regulation 8.

7. Policy background

What is being done and why?

- 7.1 This SI makes provision to give effect to the MRAs which have been agreed to provide continuity for businesses and consumers who are already used to the benefits of various MRAs. The MRAs will help facilitate businesses from outside of the UK to continue to be able to access the market in Great Britain with minimum disruption.
- 7.2 Before some products are placed on the market, a conformity assessment must be carried out by a CAB, which must be designated by the relevant national authority. MRAs allow countries to agree to recognise the conformity assessment results of the other country's CABs assessing against the first country's requirements.
- 7.3 Conformity assessment plays a critical part in ensuring products placed on the market are safe for consumers and business. It is the process of determining whether a product meets certain requirements to enable it to be legally placed on the market.
- 7.4 The EU has MRAs with several third (i.e. non-EU) countries and the UK was signed up to these through its EU membership. The UK Government's policy has been to seek continuity in the UK's existing trade relationships once the transition period has expired. The MRAs promote trade in goods between the UK and third countries by reducing technical barriers to trade, specifically by enabling conformity assessment to be undertaken by CABs in an exporting company's home market in agreed circumstances.
- 7.5 Under the MRAs, manufacturers from third countries can place products on the market in Great Britain more efficiently and cheaply, passing these savings on to consumers. Manufacturers will be able to use an assessment of conformity carried out by a designated CAB recognised by the UK under an MRA in their home country which assesses their product against the requirements of Great Britain. To the extent that this assessment is the same as that performed to assess conformity with the requirements in the third country, this may reduce the need to duplicate conformity assessment. This will provide continuity, maintaining the affordability of products and maintaining choice for consumers. It will also have the benefit of saving time for manufacturers with products being able to be placed on the market quicker than if they were required to undergo a separate test of conformity in the UK to assess whether they meet the requirements of Great Britain. In addition, UK manufacturers can use designated UK CABs recognised by third countries under MRAs to assess conformity with requirements of third countries. To the extent that this assessment is the same as that performed to assess conformity with requirements in the UK, this may reduce the need to duplicate conformity assessment.
- 7.6 Each MRA specifies the products or sectors to which it applies, such as simple pressure vessels or machinery. Schedule 1 of the instrument lists the domestic Regulations which the UK may recognise third country CABs to test against under the MRAs.
- 7.7 The instrument also sets out the power of the Secretary of State to designate UK CABs for the purpose of assessing against the third country's requirements. Schedule 2 lists the parts of the MRAs which set out the products or legislation in the third country that the UK can designate UK CABs to test against.
- 7.8 Part 3 of the instrument implements Annex 2-D to the UK-Japan CEPA by making provision to allow 720 ml, 900 ml and 1800 ml bottles of single distilled shochu to be

placed on the market of Great Britain. Of these, only the 900ml bottle size is new. Single distilled shochu is a traditional Japanese spirit drink that is single distilled, produced by pot still, bottled in Japan and exported in low volumes from Japan to the United Kingdom. In the UK it could be sold in 720 ml and 1800 ml bottles, but not 900 ml. Part 3 is necessary to implement the commitment to accept the 900ml bottle agreed with Japan in the UK-Japan CEPA.

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

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because the agreements within scope of the instrument have been agreed as a result of the UK's exit from the European Union.

9. Consolidation

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

10. Consultation outcome

- 10.1 The Government did not undertake a formal public consultation given that this instrument's provisions give legal effect to signed agreements, fulfilling our international obligations. We have maintained a dialogue with the Devolved Administrations in relation to this SI.

11. Guidance

- 11.1 Documents related to the Trade Act 2021 can be found here <https://www.legislation.gov.uk/ukpga/2021/10/contents/enacted>
- 11.2 Guidance on the UKCA marking and how to use it has been published and can be accessed here: <https://www.gov.uk/guidance/using-the-ukca-marking>
- 11.3 Guidance on placing manufactured goods on the market in Great Britain which includes information on what businesses need to do to comply with regulations can be accessed here: <https://www.gov.uk/guidance/placing-manufactured-goods-on-the-market-in-great-britain>
- 11.4 Guidance on placing manufactured goods on the market in Northern Ireland which includes information on what businesses need to do to comply with regulations can be accessed here: <https://www.gov.uk/guidance/placing-manufactured-goods-on-the-market-in-northern-ireland>
- 11.5 Hard copies of the above pieces of guidance are available on request from the contacts noted in this EM.
- 11.6 Copies of the Agreement on mutual recognition in relation to conformity assessment, certificates and markings between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia may be downloaded from <https://www.gov.uk/government/publications/cs-australia-no22019-ukaustralia-agreement-on-mutual-recognition-in-relation-to-conformity-assessment-certificates-and-markings>
- 11.7 Copies of the Agreement on mutual recognition in relation to conformity assessment between the Government of the United Kingdom of Great Britain and Northern

Ireland and the Government of New Zealand may be downloaded from <https://www.gov.uk/government/publications/cs-new-zealand-no22019-uknew-zealand-agreement-on-mutual-recognition-in-relation-to-conformity-assessment>

- 11.8 Copies of the Agreement on mutual recognition between the Government of the United Kingdom of Great Britain and Northern Ireland and the United States of America may be downloaded from <https://www.gov.uk/government/publications/cs-usa-no52019-ukusa-agreement-on-mutual-recognition>
- 11.9 Copies of Annex 2-B to the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Korea may be downloaded from <https://www.gov.uk/government/publications/ukkorea-free-trade-agreement-with-exchange-of-notes-cs-korea-no12019>
- 11.10 Copies of the Protocol on mutual recognition of conformity assessment and Annex 2-D of the Agreement between the United Kingdom of Great Britain and Northern Ireland and Japan for a Comprehensive Economic Partnership may be downloaded from <https://www.gov.uk/government/publications/ukjapan-agreement-for-a-comprehensive-economic-partnership-cs-japan-no12020>
- 11.11 Copies of the Protocol on the mutual acceptance of the results of conformity assessment to the Agreement on Trade Continuity between the United Kingdom of Great Britain and Northern Ireland and Canada may be downloaded from <https://www.gov.uk/government/publications/ukcanada-agreement-on-trade-continuity-cs-canada-no12020>

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because assessed costs have been deemed to be below the de-minimis threshold. It does not impose any significant costs to businesses, charities, voluntary bodies or the public sector. The main direct cost to business will be the familiarisation cost associated with these Regulations these are a one-off cost, estimated at £205,000.

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 as no significant costs are anticipated given the measures support continuity post transition period.
- 13.3 This decision was taken because no significant costs to small businesses are anticipated as a result of this SI.

14. Monitoring & review

- 14.1 The Department does not intend to monitor this instrument.
- 14.2 The Regulations do not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Minister for Small Business, Consumers and Labour Markets, Paul Scully, has made the following statement:

“The Department has not included a statutory review clause. This is because a review would be disproportionate when taking into account the economic impact of this instrument. The instrument also implements the United Kingdom’s international obligations, and the instrument will need to remain in place for so long as these signed agreements are in force.”

15. Contact

- 15.1 Robert Morris or Rhonda Scobie-Crago at the Department for Business, Energy and Industrial Strategy Telephone: +447341 099188 or +447990566176 or email: opsslegislation@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Sam McGeever, Deputy Director for Goods Regulation, 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.