

EXPLANATORY MEMORANDUM TO

THE WEIGHING AND MEASURING EQUIPMENT AND METERS (AMENDMENT OF SECONDARY LEGISLATION) (EU EXIT) REGULATIONS 2018

2018 No. 1387

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 Act.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 Whilst negotiations are ongoing to develop a future relationship with the EU that allows the freest and most frictionless trade in goods possible, the Department must take a responsible approach in preparing for all scenarios, including the unlikely outcome that we leave the EU without any deal in March 2019. These regulations are being made as a contingency measure to ensure that the UK has a functioning statute book that will ensure certainty irrespective of the outcome of the negotiations.
- 2.2 This instrument amends 14 national weights and measures and meter regulations (those amended by paragraphs 1 to 14 of the Schedule) to correct deficiencies which would arise on EU Exit. It amends references and definitions contained with those regulations which need to be updated so they can continue to function appropriately on EU Exit. For example, this includes adaptations to reflect the fact that the UK will no longer be an 'EEA State' or a 'Member State'. These are minor reference changes and will ensure that these regulations will continue to function as they did before EU Exit day.

Explanations

What did any relevant EU law do before exit day?

- 2.3 The 14 regulations are domestic regulations and they do not specifically implement EU Directives. However, they do contain provisions relating to the UK's membership of the EU and European Economic Area (EEA) which will need to be addressed for EU Exit. For the most part the regulations have been superseded by subsequent Directive based legislation. They remain applicable to the in-service control (and subsequent re-verification) of certain measuring equipment already placed on the Great Britain (GB) market prior to October 2016, and to the passing as fit for use for trade of a limited range of equipment that remains outside the scope of the subsequent Directive based legislation such as electricity meters for heavy industrial use.
- 2.4 The regulations prescribe the technical requirements for particular types of weighing and measuring equipment and meters and they make provisions for demonstrating compliance with such requirements and procedures for the approval and passing as fit for use for trade of such equipment and meters by inspectors or meter examiners. The regulations also include provisions which reflect the recognition of testing, technical standards and other arrangements with EEA States.

Why is it being changed?

- 2.5 The 14 regulations are being amended to ensure that the EU and EEA references contained within them are appropriately updated to take account of the UK leaving the EU. Beyond these amendments the regulations will remain unchanged.

What will it now do?

- 2.6 The amendments are being made to ensure the regulations remain fully operable for a UK market which is no longer a member of the EU and continue to function as before.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument was laid for sifting on the 29 October 2018. Both Sifting Committees have confirmed they are content for this instrument to remain subject to the negative procedure: The European Statutory Instruments Committee on the 13 November 2018; and the Secondary Legislation Scrutiny Committee on the 12 November 2018.
- 3.2 This instrument is being made under the negative procedure because it makes only minor changes to definitions and references to the EU and EEA necessary to address deficiencies arising from the withdrawal of the United Kingdom from the European Union. These amendments are not legally complex or politically significant and make no changes to the operation of the regulations they amend beyond addressing those deficiencies.

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)

- 3.3 As the instrument is subject to the negative resolution procedure there are no matters relevant to standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales and Scotland.
- 4.2 The territorial application of this instrument is the same as its territorial extent.

5. European Convention on Human Rights

- 5.1 The Minister for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst, has made the following statement regarding Human Rights:

“In my view the provisions of the Weighing and Measuring Equipment and Meters (Amendment of Secondary Legislation) (EU Exit) Regulations 2018 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument introduces amendments to domestic regulations which do not implement EU Directives, however, they do contain provisions relating to the UK’s membership of the EU and EEA. They were made under the Weights and Measures Act 1963 (the regulations amended by paragraph 2 of the Schedule to the regulations), the Weights and Measures Act 1985 (paragraphs 3 to 7 and 10 to 14 of the Schedule), the Gas Act 1972 (paragraph 1) and the Electricity Act 1989 (paragraphs 8 and 9).

Since 2006 they have for the most part been superseded by subsequent Directive based legislation, although they continue to operate for particular purposes (as set out in paragraphs 2.3 and also 6.3).

- 6.2 Most measuring equipment first placed on the UK market is now subject to the Non-automatic Weighing Instruments (NAWI) Directive 2014/31/EU (implemented in the UK by the Non-automatic Weighing Instruments Regulations 2016) and the Measuring Instruments Directive (MID) 2014/32/EU (implemented in the UK by the Measuring Instruments Regulations 2016). Note that the provisions of both these implementing regulations will continue, becoming retained EU law on exit day. The NAWI and MID remove technical barriers to legal metrological control caused by differing national laws in the EEA States. This is to facilitate the free movement of measuring equipment (i.e. placing on the market and putting into service) in the EEA as well as countries with a Mutual Recognition Agreement of goods that conform to the essential and other requirements of those Directives (requirements in connection with ensuring those goods are fit for use). Since 30 October 2016 (the end of a 10-year derogation period set by the MID) the placing on the market of nearly all measuring equipment is governed by the MID and NAWI Directive. The 10-year derogation period for NAWI ended on 1 January 2003.
- 6.3 However, these 14 older national regulations remain applicable to the in-service control (and subsequent re-verification) of equipment already placed on the market prior to October 2016 and to the first placing on the market of a limited amount of equipment that remains outside the scope of NAWI and the MID. Such equipment includes electricity meters for heavy industrial use, pharmaceutical and dry capacity measures, and any weighing equipment that does not use gravity to determine mass.
- 6.4 The regulations prescribe technical requirements for particular types of measuring equipment and they make provisions for demonstrating compliance with such requirements and procedures for the approval and passing as fit for use for trade of such equipment by inspectors or meter examiners. The regulations also include provisions which reflect the recognition of testing, technical standards and other arrangements with EEA States, to avoid duplicating testing of equipment imported from the EEA.

7. Policy background

What is being done and why?

- 7.1 The Government has committed to minimise disruption for business, consumers and citizens to ensure the smooth operation of business, infrastructure and public services on EU Exit. In some areas the Government has taken the decision to provide continuity for a temporary period after March 2019. For goods on the market, the Government's approach on continuity (as announced in the Technical Notices the Government published in September 2018) is that the UK will continue to recognise EU product requirements as valid for sale on the UK market for a time limited period after March 2019, irrespective of whether the EU reciprocates. To align with that general approach, the policy objective for these regulations is that they should function on EU Exit as they currently do now, which includes the recognition of testing, technical requirements and other arrangements with EEA States.
- 7.2 To achieve this, this instrument therefore makes appropriate minor amendments to EU and EEA references and definitions contained with these regulations to reflect the fact

that after EU Exit the United Kingdom will no longer be a member of the EU or the EEA.

- 7.3 The Government will review the recognition provisions contained within these 14 regulations over time to decide whether these should be retained in the future and that decision will be based on what works in the best interest of business and the public. In taking any future decision, the Government will work with business and others to minimise disruption.
- 7.4 As these regulations and the EU Exit deficiencies we are addressing are similar across the piece, in terms of the sector involved and the nature of effect, we have included all the amendments required to the 14 regulations in one instrument.
- 7.5 The amendments being made by this instrument will provide certainty for business and the effect of these amendments on them will be minimal, given the regulations will function as before with only minor reference changes being made to ensure they remain fully operable in the way intended on EU Exit.

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

- 8.1 This instrument is being made using the power in section 8 of 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. 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 consultation has not been completed for this instrument. The Department chose not to undertake a public consultation given that the provisions of this Order are limited to addressing failures in retained EU law to operate effectively as a result of EU Exit, and the amendments being made to the 14 regulations are minor and technical in nature with no expected significant impact, as they are being made to ensure the regulations will continue to operate in the same way they do now. Technical input required for this instrument has been provided by the Office for Product Safety and Standards.

11. Guidance

- 11.1 Guidance has not been produced for this instrument, given the regulations will continue to function as before.

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 An Impact Assessment has not been prepared for this instrument because the impacts are expected to be low level per business. The impact of this instrument is limited to

familiarisation costs to business to understand the minor reference updates being made to the regulations.

- 12.4 There is limited information about the number of importers that may be making use of the 14 regulations, but recent analysis suggests there may be around 3,000 businesses that would need to familiarise themselves with the changes. Using that figure, we have estimated the one-off total familiarisation costs to be in the region of £150,000 (approximately £50 per business).

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 We have not taken any action to assist small businesses given that only familiarisation costs have been identified and we do not expect any disproportionate impact on small and/or micro businesses.

14. Monitoring & review

- 14.1 The Department does not intend to monitor this instrument. However, as referred to in section 7 regarding the Government's EU Exit continuity approach to goods on the market, the Government will review the recognition provisions contained within these 14 regulations over time to decide whether these should be retained in the longer-term.
- 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: OPSSbrexit@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Rebecca Bradfield, Deputy Director for the EU Exit team in 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 The Minister for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst, 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
Appropriateness	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 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.
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 13, 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 16, 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. Sifting statement(s)

- 1.1 The Minister for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Weighing and Measuring Equipment and Meters (Amendment of Secondary Legislation) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because, as detailed in paragraph 2.2 and section 7 of the memorandum, the instrument makes only minor changes to definitions and references to the EU and EEA necessary to address deficiencies arising from the withdrawal of the United Kingdom from the European Union. These changes are considered uncontroversial and are not legally complex or politically significant. They make no changes to the operation of the regulations they amend beyond amending the law to address those deficiencies.

2. Appropriateness statement

- 2.1 The Minister for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Weighing and Measuring Equipment and Meters (Amendment of Secondary Legislation) (EU Exit) Regulations 2018 does no more than is appropriate”.

- 2.2 This is the case because the regulations make only minor changes to definitions and references to the EU and EEA necessary to address deficiencies arising from the withdrawal of the United Kingdom from the European Union.

3. Good reasons

- 3.1 The Minister for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst, 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”.

- 3.2 We are making appropriate amendments to domestic legislation to address deficiencies arising from the withdrawal of the United Kingdom from the European Union. The amendments are limited to achieving that purpose.

4. Equalities

- 4.1 The Minister for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst, has made the following statement(s):

“The 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.”

- 4.2 The Minister for Small Business, Consumer and Corporate Responsibility, Kelly Tolhurst, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Kelly Tolhurst, 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”.

5. Explanations

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