

EXPLANATORY MEMORANDUM TO
THE PRODUCT SAFETY AND METROLOGY ETC. (AMENDMENT)
(NORTHERN IRELAND) (EU EXIT) REGULATIONS 2020

2020 No. 1112

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 purpose of this instrument is to place the Protocol on Ireland / Northern Ireland to the Withdrawal Agreement (“the Protocol”) on a legal footing for the product safety and metrology frameworks as they relate to certain manufactured goods, as required at the end of the Transition Period. This will be done by making changes to the UK's existing EU derived underlying product safety and metrology regulations, so they continue to properly implement EU law in Northern Ireland only. Annex 2 to the Protocol lists the EU legislation that must continue to be implemented in Northern Ireland.

2.2 The instrument will help ensure the UK meets its obligations under the Protocol in respect of product safety and metrology requirements for a range of manufactured goods, by amending the following regulations, (“the Manufactured Goods Regulations”), so that they continue to apply, with necessary amendments, in Northern Ireland:

- a) Measuring Instruments (EEC Requirements) Regulations 1988
- b) Noise Emission in the Environment by Equipment for use Outdoors Regulations 2001
- c) General Product Safety Regulations 2005
- d) Supply of Machinery (Safety) Regulations 2008
- e) Toys (Safety) Regulations 2011
- f) Cosmetics Products Enforcement Regulations 2013
- g) Pyrotechnics Articles (Safety) Regulations 2015
- h) Electromagnetic Compatibility Regulations 2016
- i) Simple Pressure Vessels (Safety) Regulations 2016
- j) Lifts Regulations 2016
- k) Electrical Equipment (Safety) Regulations 2016
- l) Pressure Equipment (Safety) Regulations 2016
- m) Non-automatic Weighing Instruments Regulations 2016
- n) Measuring Instruments Regulations 2016
- o) Recreational Craft Regulations 2017

- p) Radio Equipment Regulations 2017
 - q) Personal Protective Equipment (Enforcement) Regulations 2018
 - r) Gas Appliances (Enforcement) and Miscellaneous Amendments Regulations 2018
 - s) Identification and Traceability of Explosives Regulations (Northern Ireland) 2013
- 2.3 This legislation complements and follows the template set by an earlier statutory instrument (The Pressure Vessels (Amendment) (Northern Ireland) (EU Exit) Regulations 2020), which amended the Simple Pressure Vessels Regulation 2016 (“the SPV Regulations”) and the Pressure Equipment Regulations 2016 (“the PE Regulations”).
- 2.4 With one exception, these regulations are all the responsibility of the Department for Business, Energy and Industrial Strategy. The instrument also implements provisions on behalf of the Northern Ireland Office in respect of the Identification and Traceability of Explosives (Northern Ireland) Regulations 2013. Ministerial consent from the Northern Ireland Office to make these changes has been given, to ensure the Northern Ireland regulations implement the Protocol for the traceability of civil explosives.
- 2.5 Finally, these Regulations make clear that conformity assessment bodies based in the whole of the UK can continue to assess products that are placed on the market in Northern Ireland, in accordance with the UK’s interpretation of Article 7 of the Protocol.

Explanations

What did any relevant EU law do before exit day?

- 2.6 The Manufactured Goods Regulations implement the following EU legislation (collectively, “the Protocol legislation”, which are all listed in Annex 2 to the Protocol):
- a) Directive 2011/17/EU of the European Parliament and of the Council of 9 March 2011 repealing Council Directives 71/317/EEC, 71/347/EEC, 71/349/EEC, 74/148/EEC, 75/33/EEC, 76/765/EEC, 76/766/EEC and 86/217/EEC regarding metrology
 - b) Directive 2000/14/EC of the European Parliament and of the Council of 8 May 2000 on the approximation of the laws of the Member States relating to the noise emission in the environment by equipment for use outdoors
 - c) Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety
 - d) Directive 98/37/EC of the European Parliament and of the Council of 22 June 1998 on the approximation of the laws of the Member States relating to machinery
 - e) Directive 2009/48/EC of the European Parliament and of the Council of 18th June 2009 on the safety of toys
 - f) Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products

- g) Directive 2013/29/EU of the European Parliament and of the Council of 12 June 2013 on the harmonisation of the laws of the Member States relating to the making available on the market of pyrotechnic articles
- h) Directive 2014/30/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to electromagnetic compatibility
- i) Directive 2014/29/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of simple pressure vessels
- j) Directive 2014/33/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to lifts and safety components for lifts
- k) Directive 2014/35/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of electrical equipment designed for use within certain voltage limits
- l) Directive 2014/68/EU of the European Parliament and of the Council of 15 May 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of pressure equipment
- m) Directive 2014/31/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of non-automatic weighing instruments
- n) Directive 2014/32/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of measuring instruments
- o) Directive 2013/53/EU of the European Parliament and of the Council of 20 November 2013 on recreational craft and personal watercraft
- p) Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment
- q) Regulation (EU) 2016/425 of the European Parliament and of the Council of 9 March 2016 on personal protective equipment and repealing Council Directive 89/686/EEC
- r) Regulation (EU) 2016/426 of the European Parliament and of the Council of 9 March 2016 on appliances burning gaseous fuels and repealing Directive 2009/142/EC
- s) Directive 2014/28/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market and supervision of explosives for civil uses

2.7 The Protocol Legislation largely follows a similar format and its overall purpose is to ensure that the products it covers can only be placed on the EU market if they are safe or accurate. The Protocol Legislation places obligations on economic operators

throughout the supply chain (manufacturers, importers, and distributors) and provides that before a product is placed on the market it must meet the essential requirements.

- 2.8 For certain products, it requires that conformity with the essential requirements is demonstrated by conformity assessment procedures carried out by third party conformity assessment bodies, usually called “Notified Bodies” because they have to be notified to the Commission and member States. Before placing the product on the market, the manufacturer must affix to the product, a CE or other relevant conformity marking, which is the manufacturer’s attestation that the product meets all the requirements of the legislation. Furthermore, there are requirements as to information that must be supplied along with the products (for example, instructions on use, name and address of the manufacturer and importer, where relevant).
- 2.9 The General Product Safety Regulations 2005 implements Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety. It applies to consumer products where no other specific EU legislation with the same safety objectives exists. It places obligations on producers and distributors to ensure that only products which comply with the general safety requirement are placed on the market. The legislation also specifies what action should be taken by producers, distributors and enforcement authorities if a product does not meet the general product safety requirement.

Why is it being changed?

- 2.10 Annex 2 of the Protocol requires that the Protocol Legislation is implemented in Northern Ireland. The Manufactured Goods Regulations and General Product Safety Regulations are currently drafted as if the UK is a member State of the European Union. Now that the UK is no longer a member State, the Manufactured Goods Regulations and General Product Safety Regulations must be amended to make clear that provisions that implement the Directives only apply to Northern Ireland whilst recognising that the UK is a single country.

What will it now do?

- 2.11 This instrument will ensure that necessary amendments are made to the Manufactured Goods Regulations and General Product Safety Regulations, so they continue to apply in Northern Ireland only, as required by the Protocol.

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 As the instrument is subject to 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. In addition, the territorial scope of this instrument is limited to Northern Ireland.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is Northern Ireland.

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

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

6. Legislative Context

6.1 The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 made amendments to the Manufactured Goods Regulations and the General Product Safety Regulations to correct deficiencies ensuring that these Regulations would work following the UK's exit from the EU. In order to meet Protocol obligations, the Department laid The Product Safety & Metrology etc. (Amendment) Extent and Meaning of Market Regulations 2020, which meant that the majority of the provisions in the Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 will only come into force in Great Britain, leaving the Regulations as they are, and therefore largely implementing the Protocol Legislation, in Northern Ireland. Therefore, taken together, these instruments ensure that the UK meets its obligations in respect of Northern Ireland under the Protocol of implementing the relevant EU law for manufactured goods.

6.2 The provisions made in this instrument, combined with those in earlier EU Exit regulations set out below, will ensure that the Manufactured Goods Regulations and the General Product Safety Regulations provide effective, and separate, product safety frameworks for both Great Britain and Northern Ireland. Previously laid EU Exit legislation of relevance here includes:

- a) [The Product Safety and Metrology etc. \(Amendment to Extent and Meaning of Market\) \(EU Exit\) Regulations 2020](#) - ensure that the majority of amendments made in previous EU Exit legislation only come into force for Great Britain, leaving legislation for Northern Ireland unamended and largely implementing the relevant EU law in NI.
- b) [The Product Safety and Metrology \(Amendment\) \(EU Exit\) Regulations 2020](#) - change references to EU Exit day to read "IP Completion Day" (the legal wording for the end of the Transition Period ie 11pm on 31st December 2020).
- c) [The Pressure Vessels \(Amendment\) \(Northern Ireland\) \(EU Exit\) Regulations 2020](#) - implement 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 instrument acts as a template for changes to other product and metrology sectors that are being made by this instrument.

6.3 Under the Protocol, EU product safety legislation will continue to apply in Northern Ireland after the end of the Transition Period. This includes the Protocol Legislation as set out in paragraph 2.6.

6.4 Amendments need to be made to the Manufactured Goods Regulations and the General Product Safety Regulations so that they continue to be properly implemented in Northern Ireland after the end of the Transition Period. These amendments include ensuring that references to "Member States" are replaced with an appropriate term that includes Northern Ireland (only) and the EEA states and ensuring that

information obligations on the UK to inform the Commission and Member States only apply to information in respect of Northern Ireland.

- 6.5 These amendments will complement changes we are making via separate statutory instruments, which in combination will provide a robust and effective product safety and metrology framework for the whole of the UK.
- 6.6 If this legislation is not in place by Transition Period completion day, the UK will be in breach of its international obligations under the Protocol.

7. Policy background

What is being done and why?

- 7.1 Under the Protocol, the relevant EU legislation that will continue to apply in Northern Ireland at the end of the Transition Period is listed in Annex 2 of the Protocol and includes the Directives and EU regulations listed in paragraph 2.6.
- 7.2 The purpose of this instrument is to assist in ensuring that the UK meets its international obligations under the Protocol by allowing for the proper implementation of the Protocol Legislation in Northern Ireland (only) at the end of the Transition Period.
- 7.3 The instrument amends the Manufactured Goods Regulations and the General Product Safety Regulations so that, for example, the market to which the Regulations refer is the market of Northern Ireland and the EEA states. Therefore, the Protocol will be implemented in Northern Ireland in respect of the Protocol Legislation. These amendments will ensure that these Regulations are applied within an operable legal framework, while meeting Protocol obligations.
- 7.4 This will complement changes the Department is making via separate statutory instruments, which in combination will provide a robust and effective product safety and metrology framework for the whole of the UK.

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

- 8.1 This instrument is made using powers under section 8C of the European Union (Withdrawal) Act 2018.

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 are limited to implementing the Protocol and ensuring that Northern Ireland continues to properly implement EU derived safety frameworks for these manufactured goods.
- 10.2 There has been engagement with the Northern Ireland Executive (NIE) on this instrument and also the Northern Ireland Office. This has included the consent needed for the UK Government to implement any changes to legislation on behalf of NIE.

11. Guidance

- 11.1 Guidance on the UK's approach to the Protocol was published on 20 May 2020 and is available on the GOV.UK website.
- 11.2 Guidance on the rules for moving goods under the terms of the Protocol was published on 07 Aug 2020 and is available on the GOV.UK website. Further guidance will be made available before the end of 2020.
- 11.3 Further support and advice is available by contacting goodsregulation@beis.gov.uk.

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 the impacts are expected to be low level for business. The impact of this instrument is limited to familiarisation costs to business to understand the changes being made to the earlier legislation.

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 new operational costs are anticipated.
- 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.
- 14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Laura Deslandes at the Department for Business, Energy and Industrial Strategy Telephone: 0207 215 3218 or email: laura.deslandes@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Giles Hall, Deputy Director for Trade in Goods, 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.