

**EXPLANATORY MEMORANDUM TO**  
**THE PRODUCT SAFETY AND METROLOGY ETC. (AMENDMENT TO EXTENT**  
**AND MEANING OF MARKET) (EU EXIT) REGULATIONS 2020**

**2020 No. 676**

**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 This instrument amends the extent of the Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696) (“the 2019 Regulations”) so that the majority of the amendments made by the 2019 Regulations extend only to England and Wales and Scotland. It also revokes amendments made to some subordinate legislation that extends only to Northern Ireland. This will ensure that the legislation amended by the 2019 Regulations can continue to implement EU law in respect of Northern Ireland, where required by the Protocol on Ireland / Northern Ireland to the Withdrawal Agreement (“the Protocol”).

*Explanations*

What did any relevant EU law do before exit day?

- 2.2 The Regulations amended by the 2019 Regulations implement a number of pieces of EU law relating to product safety and metrology. The key requirement of the EU legislation is that only safe or accurate products may be placed on the EU market.

Why is it being changed?

- 2.3 If the 2019 Regulations were to remain unchanged before they come into force at the end of the Transition Period, it would correct deficiencies and create a domestic product safety and metrology framework for the whole of the UK. This would not deliver the obligations of the Protocol, which requires Northern Ireland to apply certain elements of EU law, including product safety and metrology legislation.

What will it now do?

- 2.4 This instrument amends the 2019 Regulations so that the majority of those amendments extend to Great Britain rather than the United Kingdom. The 2019 Regulations will now provide for a domestic Great Britain framework for product safety and metrology at the end of the Transition Period. This framework will deliver a functioning statute book for Great Britain and ensure that there is no reduction in product safety or accuracy, or consumer protections, at the end of the Transition Period. The Department plans to bring forward further statutory instruments to amend the underlying product safety and metrology regulations to make sure that a framework for Northern Ireland which applies certain elements of EU law works effectively.

### **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.

### **4. Extent and Territorial Application**

4.1 The territorial extent of this instrument is the United Kingdom. The extent of the instrument this instrument amends is explained in paragraph 4.3.

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

4.3 This instrument amends the extent of the 2019 Regulations so that the majority of amendments themselves, which previously extended to the whole of the United Kingdom, extend to England and Wales and Scotland only. The 2019 Regulations also amend one piece of primary legislation that extends to the whole of the United Kingdom and some retained direct EU law; this instrument does not amend the extent of those pieces of legislation. The retained direct EU law is incorporated into domestic law under section 3 of the European Union (Withdrawal) 2018 Act save insofar as it applies to Northern Ireland for the purposes of the Protocol and accordingly has no practical application in Northern Ireland as the Protocol instead applies the EU law provisions in Northern Ireland. This instrument also revokes some amendments made in the 2019 Regulations to subordinate legislation that extends only to Northern Ireland.

### **5. European Convention on Human Rights**

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

### **6. Legislative Context**

6.1 The 2019 Regulations amended various pieces of product safety and metrology legislation that implement EU law on a UK-wide basis, to correct deficiencies arising from the UK's withdrawal from the European Union. The Protocol provides that these pieces of EU law must continue to be implemented in Northern Ireland.

6.2 Further changes will be necessary to that legislation as it applies in Northern Ireland to make sure that the EU law is correctly implemented in respect of Northern Ireland. The Department will be bringing forward further instruments to this effect.

6.3 This instrument is required to be made so that those further instruments can be made. Without these changes, the amendments made by the 2019 Regulations will continue to extend to Northern Ireland, which is inconsistent with the United Kingdom's international obligations under the Protocol.

6.4 To continue to apply specific EU product safety legislation in Northern Ireland and provide an operable legal framework for Great Britain at the end of the Transition Period, this instrument makes three types of amendment to the 2019 Regulations:

- Changing the extent of the 2019 Regulations, so that the majority of the changes made by the 2019 Regulations to the underlying regulations only extend to England and Wales and Scotland. This leaves the underlying provisions intact for Northern Ireland.
- Making changes to the definitions of “place on the market” and “make available on the market” so that the meanings relate to the market of Great Britain and not the market of the UK, i.e. not including Northern Ireland.
- Revoking amendments made to legislation that extends to Northern Ireland only, which implements EU law listed in the Protocol.

## 7. Policy background

### *What is being done and why?*

- 7.1 Under the Protocol, EU rules listed in Annex 2 of the Protocol concerning the placing of goods on the market will still apply in Northern Ireland. The legislation amended by the 2019 Regulations implements EU legislation listed in Annex 2. The purpose of product safety and metrology legislation is to ensure that products that are placed on the market are safe or accurate and compliant with relevant regulatory requirements. To this end, EU legislation places obligations on economic operators throughout the supply chain (manufacturers, importers, distributors and, in certain product legislation, authorised representatives appointed by manufacturers). The key obligations are that products are safe and/or accurate and meet certain requirements.
- 7.2 The purpose of this instrument is to assist in ensuring that the UK meets its international obligations under the Protocol by continuing to apply specific EU product safety and metrology legislation in Northern Ireland.
- 7.3 This instrument limits the extent of some of the amendments made to correct deficiencies in retained EU law relating to product safety and metrology in England and Wales and Scotland only. It also makes amendments to the definition of “placing on the market” and “make available on the market” for all schedules of the 2019 Regulations which amend secondary legislation, so that they refer to Great Britain rather than UK. This creates an operable legal framework for Great Britain only at the end of the Transition Period, whilst assisting in ensuring that the relevant EU law remains implemented in respect of Northern Ireland.
- 7.4 The instrument complements changes the Department will be making via further statutory instruments which will ensure a product safety and metrology framework for Northern Ireland that maintains compliance with the Protocol and follows EU law. This will ensure that EU law will continue to be implemented in Northern Ireland where required by the Protocol and that the retained EU law in England and Wales and Scotland will function correctly when EU law ceases to apply to those jurisdictions
- 7.5 The 2019 Regulations amend three measures which extend only to Northern Ireland and for which certain Northern Ireland Departments have responsibility. These amendments are being revoked by this instrument. This is being done in close consultation with the responsible Northern Ireland Departments.

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

8.1 This instrument is made using the power in 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 A consultation has not been completed for this instrument. The Department chose not to undertake a public consultation as the provisions of this instrument are limited to making changes to the extent of earlier EU Exit legislation to provide a clear framework for Great Britain and ensure that the post EU Exit domestic regime creates a regulatory framework for Northern Ireland that will be compliant with the Protocol.

10.2 There has been engagement with the Northern Ireland Executive on this instrument, as well as with the responsible Northern Ireland departments. This has included sharing the draft legislation for the proposed instrument in any areas where Northern Ireland is able to legislate separately.

## **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. The government will publish further guidance in due course.

11.2 Further support and advice is available by contacting [goodsregulation@beis.gov.uk](mailto: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 extent of 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](mailto: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.