

EXPLANATORY MEMORANDUM TO
THE PRODUCT SAFETY AND METROLOGY (AMENDMENT) (EU EXIT)
REGULATIONS 2020

2020 No. 852

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

2. Purpose of the instrument

- 2.1 This instrument amends two earlier product safety and metrology instruments the Department prepared for exiting the EU without a Withdrawal Agreement, to reflect the fact that the UK has now left the EU and entered a Transition Period which will last until 11 p.m. on 31 December 2020.
- 2.2 This instrument amends references to ‘exit day’ contained within those earlier instruments to read ‘IP completion day’, i.e. 11pm on 31 December 2020, which is a term now defined in the Interpretation Act 1978.

Explanations

What did any relevant EU law do before exit day?

- 2.3 The two earlier instruments that this instrument amends are: (1) *The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019* (“the 2019 Regulations”); and (2) *The Product Safety, Metrology and Mutual Recognition Agreement (Amendment) (EU Exit) Regulations 2019* (“the Amendment Regulations”), which itself amended the 2019 Regulations to take account of the agreed extension to exit day (from 31 October 2019 to 31 January 2020).
- 2.4 At the time both instruments were required to ensure that, in the event of the UK leaving the EU without a deal, products placed on the UK market would continue to meet substantially the same essential requirements and that there was no reduction in product safety or accuracy, or consumer protections, as a result of EU Exit. Provisions contained in the European Union (Withdrawal Agreement) Act 2020 ensure these instruments will now come into force for IP completion day.
- 2.5 The 2019 Regulations amend 38 sets of product safety and metrology measures to correct deficiencies which would arise in those measures at the end of the Transition Period. It includes changes to four measures that are currently directly applicable EU instruments (EU Regulations) which place obligations on economic operators to ensure that products are safe, and the instrument also includes the revocation of four EU instruments that will be redundant in UK legislation at the end of the Transition Period. Several definitions in the 2019 Regulations were drafted with reference to “exit day”. These include the definitions of “authorised representative”, “approved bodies” and references to EU law.

- 2.6 The relevant provisions of the Amendment Regulations, that are being amended by this instrument, introduce a definition of “authorised representative” into Schedule 8 of the 2019 Regulations and introduce a provision concerning codes for manufacturers in Schedule 28 of the 2019 Regulations, both of which include references to “exit day”.

Why is it being changed?

- 2.7 As the UK reached a withdrawal agreement with the EU and entered into a Transition Period, the majority of the references to ‘exit day’ introduced by the 2019 Regulations are no longer appropriate and should instead refer to the end of the Transition Period (‘IP completion day’).

What will it now do?

- 2.8 Where these earlier instruments included references to ‘exit day’ they will now instead include appropriate references to ‘IP completion day’, to ensure the amendments they make can instead work appropriately as required for the end of the Transition Period. The Department plans to bring forward additional statutory instruments which will make further amendments to the earlier legislation to deliver further necessary changes to reflect the requirements of the Withdrawal Agreement, so that these can provide for a domestic framework for product safety and metrology at the end of the Transition Period, which will deliver a functioning statute book for Great Britain. Included in this suite of legislation is an instrument that restricts the extent of the amendments made by the 2019 Regulations to Great Britain, leaving the underlying Regulations unamended for Northern Ireland.

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 2 July 2020. 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 14 July 2020; and the Secondary Legislation Scrutiny Committee on 16 July 2020.
- 3.2 This instrument is being made under the negative procedure because it makes only minor changes to references to ‘exit day’ contained within earlier legislation. These amendments are not in themselves legally complex or politically significant and make no changes to the operation of the regulations they amend beyond addressing this change.

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 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 same as the provisions it amends.
- 4.2 The extent of some of the provisions being amended are themselves being amended by an instrument being laid at the same time as this instrument (the Product Safety

and Metrology etc. (Amendment to Extent and Meaning of Market) (EU Exit) Regulations 2020) (“the Extent Regulations”). The Extent Regulations amend the extent of the amendments made by the 2019 Regulations so that, in respect of the secondary legislation they amend, they only extend to Great Britain, leaving the underlying Regulations as they were for Northern Ireland.

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 (Amendment) (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 and compliant. To this end, it places various obligations on economic operators throughout the supply chain including manufacturers’ authorised representatives and importers, both of which must be established in the EU under EU law. Much of the legislation amended by the 2019 Regulations sets out a framework for products ranging from toys to simple pressure vessels developed at EU level which provides that products must meet certain safety requirements; 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.

6.2 The 2019 Regulations amend these provisions to provide that after IP completion day importers must be established in the UK, but that obligations as to labelling can be met by placing the information on documents accompanying the product, rather than a product itself, for a period of 18 months beginning with exit day; the 2019 Regulations also provide that authorised representatives established in the EEA prior to exit day can continue to be authorised representatives after exit day (but authorised representatives established after exit day must be established in the UK) and that notified bodies become “approved bodies”, and those that were notified bodies immediately before exit day automatically become approved bodies. This instrument amends those references to “exit day” so that they become references to “IP completion day”. There are also transitional provisions drafted by reference to “exit day” that this instrument updates to read “IP completion day” and various definitions (of EU legislation) are amended so that the relevant legislation referred to is the legislation as it has effect immediately before IP completion day.

7. Policy background

What is being done and why?

7.1 The purpose of this instrument is to amend earlier product safety and metrology instruments prepared for exiting the EU so as to take account of the Transition Period agreed and passed by Parliament in the European Union (Withdrawal Agreement) Act 2020.

- 7.2 The policy as agreed by Parliament has not changed but the relevant date has been updated from “exit day” to “IP completion day”. The importer labelling, the authorised representative and the approved body provisions were introduced so as to ease the transition for British business into the new domestic regime; these amendments make sure that those business still have the same amount time from the introduction of the new regime to take advantage of those measures.
- 7.3 Similarly, the transitional provisions must cover any products made available on the market up until the new regime comes into effect, now on IP completion day. The relevant version of EU legislation is the legislation as it has effect immediately before IP completion day.
- 7.4 With the changes to ‘exit day’ references this instrument is making to Schedule 26 (non-automatic weighing instruments) of the 2019 Regulations, we are also taking the opportunity to make a minor change to improve the clarity of the earlier drafting in that Schedule.
- 7.5 As set out in paragraph 2.8, the Department will be making amendments via further statutory instruments to ensure an operable legal framework for Great Britain only, at the end of the Transition Period, whilst assisting in ensuring that a framework for Northern Ireland, which applies certain elements of EU law, continues to work effectively, including in line with the requirements of the Ireland / Northern Ireland Protocol in the Withdrawal Agreement.

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, 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. 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 instrument are limited to updating references to ‘exit day’ contained within earlier instruments to read ‘IP completion day’, i.e. 11pm on 31 December 2020.

11. Guidance

- 11.1 Guidance has not been produced for this instrument as it makes no changes to the earlier legislation beyond reference updates to prepare for the end of the Transition Period.

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 for business. The impact of this instrument is limited to familiarisation costs to business to understand the updates being made to the references to ‘exit day’ contained in 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 because of this instrument.

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 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 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 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 (Amendment) (EU Exit) Regulations 2020 does no more than is appropriate”.

- 1.2 This is the case because this instrument makes only minor changes to existing references to ‘exit day’ in earlier product safety and metrology legislation to read ‘IP completion day’, i.e. 11pm on 31 December 2020. This is to give meaningful effect to the Transition Period.

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 Transition Period. 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 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 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”.

4. Explanations

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