

EXPLANATORY MEMORANDUM TO
THE ECODESIGN FOR ENERGY-RELATED PRODUCTS AND ENERGY
INFORMATION (AMENDMENT) REGULATIONS 2021

2021 No. 1097

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 statutory instrument amends various retained EU delegated regulations on Ecodesign and Energy Labelling that are in force in Great Britain in order to avoid technical discrepancies with equivalent legislation which is in force in the EU and in Northern Ireland by virtue of the Northern Ireland Protocol.
- 2.2 It also amends the Ecodesign for Energy-Related Products Regulations 2010 (“the 2010 Regulations”) and the Energy Information Regulations 2011 (“the 2011 Regulations”), in so far as they apply to Great Britain, to ensure the relevant Schedules refer to the correct product-specific measures, so that these can be enforced by the Market Surveillance Authorities (MSAs).

Explanations

Explanatory statements for instruments amending or revoking regulations etc. made under section 2(2) of the European Communities Act 1972, as required under paragraph 15 of Schedule 8 to the European Union (Withdrawal) Act 2018

- 2.3 The Minister for Climate Change and Corporate Responsibility, Lord Callanan, has made the following statement regarding regulations made under the European Communities Act 1972:

“In my opinion there are good reasons for this statutory instrument to amend the Ecodesign for Energy-Related Products Regulations 2010 and the Energy Information Regulations 2011 made under section 2(2) of the European Communities Act 1972. This is because it is necessary to ensure that the 2010 and 2011 Regulations are up to date with regard to the Ecodesign and Energy Labelling measures which apply in Great Britain, so that product standards can be enforced by the Market Surveillance Authorities.

An overview of the Ecodesign for Energy-Related Products Regulations 2010 (the 2010 Regulations) and the Energy Information Regulations 2011 (the 2011 Regulations) can be found at paragraphs 6.5 and 6.6.

The amendments made to the 2010 Regulations update Schedule 1 with respect to GB, which lists the Ecodesign measures that must be complied with and for which a declaration of conformity is required, allowing them to be enforced by the MSA for Ecodesign. The effect of these amendments is to update the entries to ensure they

refer to the most up to date regulations in order to aid compliance with the applicable measures in GB.

The amendments to the 2011 Regulations similarly update Schedule 1 with respect to GB, which lists the applicable Energy Labelling measures and allows them to be enforced by the MSAs for Energy Labelling. The effect of these amendments is to update the entries to ensure they refer to the most up to date regulations; to remove a duplicate entry; and to make other clarifications to aid compliance with the applicable measures in GB.”

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The specific procedural and publication requirements for this instrument have been complied with.

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 includes Scotland.

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 England and Wales, and Scotland.

5. European Convention on Human Rights

- 5.1 The Minister for Climate Change and Corporate Responsibility, Lord Callanan has made the following statement regarding Human Rights:

“In my view the provisions of the Ecodesign for Energy-Related Products and Energy Information (Amendment) Regulations 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The powers formerly vested in the European Commission to introduce product-specific Ecodesign and Energy Labelling measures for energy-related products in the UK were transferred to the Secretary of State, via the Ecodesign for Energy-Related Products and Energy Information (Amendment) (EU Exit) Regulations 2019 (“the 2019 Regulations”) which came into force on 1 January 2021. This instrument makes provision under these powers.

- 6.2 Specifically:

- The new regulations 22 and 24 in the 2010 Regulations were inserted by the 2019 Regulations, which give the Secretary of State powers to introduce new Ecodesign measures for energy-related products.
- The powers in Article 11 of retained Regulation (EU) 2017/1369 (“the Energy Labelling Framework Regulation”) were amended by the 2019 Regulations, and a new Article 11A was added, which enables the Secretary of State to introduce new Energy Labelling measures, and to update (“rescale”) existing energy labels.

- 6.3 Paragraph 10 of Schedule 8 to the European Union (Withdrawal) Act 2018 operates to allow both powers to be used to amend retained direct minor EU legislation.
- 6.4 The Ecodesign for Energy-Related Products and Energy Information (Amendment) (EU Exit) Regulations 2020 (“the 2020 Regulations”), amended the extent of the 2019 Regulations and limited the scope of the new Ecodesign powers in the 2010 Regulations to Great Britain only as part of the implementation of the Northern Ireland Protocol. Also, by virtue of the operation of the Northern Ireland Protocol, the amended labelling powers do not apply in Northern Ireland (because the Energy Labelling Framework Regulation as it has effect in the EU continues to apply in Northern Ireland).
- 6.5 The 2010 Regulations transposed the provisions of the EU Ecodesign Directive (Directive 2009/125/EC establishing a framework for the setting of eco-design requirements for energy-related products) and created domestic obligations and a related enforcement regime to ensure that UK MSAs have powers to enforce these obligations. The Office for Product Safety and Standards (OPSS) exercises the Secretary of State’s function as MSA for Ecodesign for the whole of the UK.
- 6.6 The 2011 Regulations outline the UK’s enforcement regime to ensure that UK MSAs have the powers to enforce Energy Labelling obligations. In England, Wales and Scotland, the MSAs are the Secretary of State and the local weights and measures authority (Trading Standards). The functions of the Secretary of State are carried out by OPSS. The Advertising Standards Authority (ASA) is responsible for ensuring that advertising of Energy Labelling across various forms of media is in accordance with UK advertising codes.
- 6.7 The Government has recently laid two statutory instruments which are independent of yet related to this instrument; these other two statutory instruments implement new and updated Ecodesign and Energy Labelling requirements for a range of domestic and non-domestic products in Great Britain. In addition, the Government will lay a further independent yet related statutory instrument in due course in order to update Schedule 1 to the 2010 Regulations and Schedule 1 to the 2011 Regulations with respect to Northern Ireland.

7. Policy background

What is being done and why?

- 7.1 Ecodesign and Energy Labelling policies aim to reduce the energy use, carbon footprint and wider environmental impacts of energy-related products, as well as to save consumers money on their energy bills.
- 7.2 The instrument makes changes to retained EU delegated regulations that are in force in Great Britain in order to avoid technical discrepancies with equivalent legislation which is in force in Northern Ireland and the EU. The retained EU delegated regulations affected by the amendments are:
- Commission Regulation (EU) 2019/424 with respect to eco-design requirements for servers and data storage products;
 - Commission Delegated Regulation (EU) 2019/2013 with respect to energy labelling requirements for electronic displays;
 - Commission Delegated Regulation (EU) 2019/2014 with respect to energy labelling requirements for household washing machines and washer-dryers;

- Commission Delegated Regulation (EU) 2019/2016 with respect to energy labelling requirements for household refrigeration; and
- Commission Delegated Regulation (EU) 2019/2017 with respect to energy labelling requirements for household dishwashers.

- 7.3 The instrument is required in order to make amendments to the retained EU delegated regulations listed in paragraph 7.2 so that they reflect changes made by the European Commission to their equivalent regulations. The EU's amendments began to apply in Northern Ireland and in the EU earlier in 2021.
- 7.4 The amendments correct technical errors, improve accuracy, clarify certain definitions and make technical adaptations to some measurements and calculations, with the aim of facilitating understanding of and compliance with the requirements. Some of the amendments made to Energy Labelling regulations are to reflect changes made to the Ecodesign requirements for the same products. A small number of additional amendments are made to further improve clarity.
- 7.5 Making these amendments to the retained EU delegated regulations will avoid technical discrepancies between the requirements in force in GB and those in force in Northern Ireland and the EU. It is deemed necessary to make these amendments to ensure retained EU law on Ecodesign and Energy Labelling will generally have essentially the same effect in GB as it does in Northern Ireland and in the EU so that product manufacturers can largely follow the same set of standards and compliance procedures as before 1 January 2021. It is also important that GB legislation expresses the requirements and compliance procedure in a way that is equally clear as in the EU's legislation. Unnecessary discrepancies between retained EU law and the regulations that apply in Northern Ireland and in the EU may raise questions about whether the requirements are actually the same and could cause product manufacturers to have to set up dual processes to ensure their products comply with both sets of slightly different requirements.
- 7.6 The instrument will update Schedule 1 to the 2010 Regulations and Schedule 1 to the 2011 Regulations with respect to Great Britain. Specifically, the instrument will remove certain references to Ecodesign and Energy Labelling measures that are no longer in force in GB and will ensure that the remaining references to measures currently in force in GB are up to date so that they can be properly enforced by the relevant MSA.
- 7.7 No transitional provision is included in this SI. Verification will be conducted on the basis of the Ecodesign and Energy Labelling regulations as amended by this SI, irrespective of when the product was placed on the market. It is necessary that this be the case because the regulations, as they stood before this SI, contained errors and unclear requirements, which created challenges to full compliance. We do not anticipate any adverse effect on suppliers and dealers. To the small extent that the SI changes the requirements to be met in relation to the affected products, suppliers and dealers have had sufficient notice of the forthcoming changes to ensure that they meet the requirements going forward.

8. European Union Withdrawal and Future Relationship

- 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 it

amends EU delegated regulations which were retained in domestic legislation after the end of the transition period for leaving the EU.

9. Consolidation

9.1 This instrument is not being consolidated with any other legislation.

10. Consultation outcome

10.1 The Government ran a four-week consultation across March and April 2021 on the proposed amendments. This was conducted directly with the key stakeholders who will be impacted by the new legislation – manufacturers and trade associations. These stakeholders were provided with the draft statutory instrument and were asked to submit feedback on it. An expedited consultation period was chosen because the proposed amendments made no changes to the underlying policy, and the Department had already received representations from the key affected groups in support of making the amendments as quickly as possible to avoid prolonged discrepancies between retained EU delegated regulations in GB and the equivalent regulations in force in Northern Ireland and the EU.

10.2 We received three responses to the consultation, from two trade association and one non-profit organisation. We held a roundtable stakeholder meeting to raise awareness of the consultation and to outline its objectives. We also gave the opportunity for stakeholders to discuss the consultation bilaterally with us.

10.3 Consultation feedback showed strong support for making the amendments. In response to the feedback received, we have clarified certain provisions and improved accuracy in order to more closely reflect the equivalent regulations in force in Northern Ireland and in the EU. A small number of suggestions were made in relation to further improvements that could be made to the retained EU delegated regulations, however we decided not to make these amendments as to do so would have the effect of making the retained EU delegated regulations less reflective of those in force in Northern Ireland and the EU, which is counter to the policy intention.

10.4 The measures will come into force from 1 October 2021 to allow manufacturers sufficient time for familiarisation with the amendments.

11. Guidance

11.1 No guidance has been produced for this instrument. This is because there is strong and regular engagement with stakeholders. Further, most manufacturers are already aware of the requirements.

12. Impact

12.1 There is no, or no significant, impact on 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 changes brought about by this instrument are expected to have no significant direct cost to business, charities, voluntary bodies or the public sector. Some minor familiarisations with the applicable legislation may be required but this is not expected to incur a significant cost.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses. No specific action is proposed to minimise regulatory burdens on small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is ongoing.
- 14.2 The 2010 Regulations and 2011 Regulations both contain a statutory review clause. A statutory review clause is included in this instrument for Commission Regulation (EU) 2019/424 Ecodesign requirements for servers and data storage products only. The Secretary of State must review those Regulations before 25 December 2024.

15. Contact

- 15.1 Lucy Birt at the Department for Business, Energy and Industrial Strategy. Telephone: 020 7215 3070 or email: Lucy.Birt@beis.gov.uk can be contacted with any queries regarding the instruments.
- 15.2 Sam Balch, Deputy Director for Home Retrofit and Energy-Using Products at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Minister for Climate Change and Corporate Responsibility, Lord Callanan at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.