

EXPLANATORY MEMORANDUM TO

**THE METROLOGY, HEALTH AND SAFETY AND PRODUCT SAFETY
(AMENDMENT) (NORTHERN IRELAND) (EU EXIT) REGULATIONS 2019**

2019 No. 202

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 delivers in our national interest, the Department must take a responsible approach in preparing for all scenarios, including the outcome that we leave the EU without any deal in March 2019. This instrument is 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 In the continued absence of a Northern Ireland Executive, UK Government Ministers have decided that in the interests of legal certainty, the UK will take through the necessary amendments to Northern Ireland legislation at Westminster. This is being done in consultation with the Northern Ireland departments.
- 2.3 This instrument amends references and definitions contained within 15 items of Northern Ireland primary and secondary legislation (those amended in Schedules 1 and 2) to correct deficiencies that would arise on EU Exit, so they can continue to function appropriately. For example, this includes adaptations to reflect the fact that the UK will no longer be an ‘EEA State’ or a ‘Member State’. The majority of these are minor reference changes and will ensure that the legislation will continue to function as it did before EU Exit day.

Explanations

What did any relevant EU law do before exit day?

- 2.4 The weighing and measuring and meters legislation prescribes the technical requirements for particular types of weighing and measuring equipment and meters. It makes provision 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. This legislation also includes provisions which reflect the recognition of testing, technical standards and other arrangements with EEA States.
- 2.5 The packaged goods regulations provide consumers with protection from short measure and ensure they can rely on the accuracy of quantity indications for packaged goods. The intoxicating liquor order similarly concerns the packaging and quantity requirements in connection with the control and sale of intoxicating liquor. The consumer protection order is aimed at preventing the supply of unsafe goods to

consumers and contains provisions on product liability, with relevant enforcement powers and duties in respect of these provisions.

- 2.6 The lifting operations and equipment regulations place duties on people and businesses who own, operate or have control over lifting equipment, for safety purposes. The offshore installation legislation contains provisions that are connected with reducing risks from major hazards to the health and safety of the workforce employed on offshore installations.

Why is it being changed?

- 2.7 The 15 items of legislation are being amended primarily to ensure that the EU and EEA references contained within them are appropriately updated to take account of the UK leaving the EU.

What will it now do?

- 2.8 The amendments are being made to ensure these items of legislation remain fully operable for a Northern Ireland market which is no longer a part of the EU and continue to function as before. Northern Ireland typically aligns with the approach of the rest of the UK in these policy areas, and the amendments being made by this instrument are comparable to changes being made to equivalent GB legislation.

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 14 January 2019. 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 29 January 2019; and the Secondary Legislation Scrutiny Committee on 31 January 2019.
- 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 and minor operability fixes necessary to address deficiencies arising from the withdrawal of the United Kingdom from the European Union. 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 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 Northern Ireland.
- 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 Metrology, Health and Safety and Product Safety (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument introduces amendments to several Northern Ireland regulations relating to weighing and measuring equipment and meters (Paragraphs 1-7 and 9-11 of Schedule 2) which do not implement EU Directives, however, they do contain provisions relating to NI being part of the EU and EEA. For the most part these regulations have been superseded by subsequent EU Directive based legislation - 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). The provisions of both these implementing regulations will continue, becoming retained EU law on exit day.
- 6.2 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 10 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.
- 6.5 The Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 2011 protect consumers from short measure and ensure that they can rely on the accuracy and quantity indications while making reasonable allowances for the small variations in quantity from package to package which are inherent in the use of automatic packing machinery. These regulations set out a complete regime for the average system of quantity control applied to packaged goods.
- 6.6 The Weights and Measures (Intoxicating Liquor) Order (Northern Ireland) 1989 makes provision concerning the packaging and quantity requirements in connection with the control and sale of most forms of intoxicating liquor in Northern Ireland. Some provisions contain minor EU references which this instrument updates to ensure these can continue to operate as intended.

- 6.7 The Lifting Operations and Lifting Equipment Regulations (Northern Ireland) 1999 place duties on people and companies who own, operate or have control over lifting equipment in connection with the safety of such equipment. The Offshore Installation (Safety Case) Regulations (Northern Ireland) 2007 and Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations (Northern Ireland) 2016 contain provisions connected with reducing risks from major health and safety hazards to the workforce employed on offshore installations or connected activities. These pieces of legislation include provisions in respect of conformity assessment marking, to provide for use of the EU certification marks (such as the CE mark). Appropriate conformity assessment marking is required to demonstrate goods are compliant with essential requirements, as part of ensuring only compliant products are placed on the Northern Ireland market.
- 6.8 Lifting equipment and lifting accessories will still be required to have the appropriate conformity assessment marking undertaken for the market they are being placed on and, for offshore installations, an examination by the verifier of any design, specification, certificate, CE marking or other document, mark or standard will still be required when establishing a verification scheme. This legislation will be amended to ensure that marking requirements remain operable on EU Exit.
- 6.9 The Consumer Protection (Northern Ireland) Order 1987 is aimed at preventing business practices that are unfair to consumers and contains suitable provisions on product liability, together with appropriate enforcement powers and duties. The Order contains some EU references that will be updated to ensure it remains fully operable.
- 6.10 The legislation being amended by this instrument relates to areas which are the transferred responsibility of Northern Ireland. Northern Ireland typically aligns with the approach of the rest of the UK in these policy areas. In this regard the amendments being made by this instrument are similar to changes being made to the equivalent GB legislation. These GB amendments are contained in the Weighing and Measuring Equipment and Meters (Amendment of Secondary Legislation) (EU Exit) Regulations 2018 No. 1387 (<http://www.legislation.gov.uk/ukxi/2018/1387/contents/made>) and the Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (<http://www.legislation.gov.uk/ukdsi/2019/9780111176368>).

7. Policy background

What is being done and why?

- 7.1 This instrument applies to 15 measures which are a transferred matter for Northern Ireland under the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU Exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for Exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day in the absence of a Northern Ireland Executive. With exit day less than two months away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. UK Government Ministers have therefore decided that in the interests of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.

- 7.2 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, intended to be for a time limited 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.
- 7.3 To align with that general approach, the policy objective for the pieces of legislation being amended by this instrument 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 contained in some of the pieces of legislation being amended.
- 7.4 To achieve this objective, this instrument makes appropriate amendments to EU and EEA references and definitions contained within the legislation to reflect the fact that after EU Exit the United Kingdom will no longer be a member of the EU or the EEA.
- 7.5 It is expected that the recognition provisions contained within the legislation being amended by paragraphs 1 to 7 and 9 to 11 of Schedule 2 (the provisions which reflect the recognition of testing, technical standards and other arrangements with EEA States) will be reviewed 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 and the NI Executive will work with business and others to minimise disruption.
- 7.6 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 legislation will function as before with only minor reference changes being made to ensure the legislation remains fully operable in the way intended on EU Exit.
- 7.7 This instrument concerns Northern Ireland legislation covering areas for which the Department for Business, Energy and Industrial Strategy and the Health and Safety Executive has the equivalent GB policy responsibility. We are grouping together amendments to Northern Ireland legislation in this policy area in one separately identifiable instrument to ensure we have an easily transferable item of legislation for areas of transferred responsibility to Northern Ireland.

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 15 items of Northern Ireland legislation are minor and technical to ensure this legislation will continue to operate in the same way as it does now. Technical input required for this instrument has been provided by the Northern Ireland Department for the Economy and by the Health and Safety Executive for Northern Ireland.

11. Guidance

- 11.1 Guidance has not been produced for this instrument, given the legislation 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 for business. The impact of this instrument is limited to familiarisation costs to business to understand the minor reference updates and operability fixes being made to the legislation.

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 UK Government's EU Exit continuity approach to goods on the market, the UK Government and the Northern Ireland Executive will review the recognition provisions contained within the legislation 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 Bigley at the Department for Business, Energy and Industrial Strategy Telephone: 020 7215 1730 or email: OPSSbrenxit@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 Metrology, Health and Safety and Product Safety (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 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 2.3 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 in themselves are considered uncontroversial and are not legally complex or politically significant. They make no changes to the operation of the legislation 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 Metrology, Health and Safety and Product Safety (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 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 Northern Ireland 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, Consumers and Corporate Responsibility, Kelly Tolhurst, has made the following statement(s) 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.”

- 4.3 “The Equalities Acts do not extend to Northern Ireland, and as the Metrology, Health and Safety and Product Safety (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 extends to Northern Ireland, I have given due regard to the need to eliminate discrimination, harassment and victimisation in relation to Northern Ireland.”

5. Explanations

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