

EXPLANATORY MEMORANDUM TO
THE PRODUCT SAFETY (TOYS AND COSMETICS) AND METROLOGY
(MEASURING AND NON-AUTOMATIC WEIGHING INSTRUMENTS)
(AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 No. 1486

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 The purpose of this instrument is to correct minor errors and clarify drafting in two recently laid EU Exit instruments:
 - (1) the *Product Safety & Metrology etc (Amendment etc) (UK(NI) Indication) (EU Exit) Regulations 2020* (“the Product Regulations GB”). Amongst other things, this affirmative instrument implements the UK’s approach on ‘qualifying Northern Ireland goods’, in relation to the products covered by the instrument, ensuring that they have unfettered access to the rest of the UK market; and
 - (2) the *Product Safety & Metrology etc (Amendment) (Northern Ireland) (EU Exit) Regulations 2020* (S.I. 2020/1112) (“the *Product Regulations NI*”). This earlier negative instrument places the Protocol on Ireland / Northern Ireland in the Withdrawal Agreement (“the Protocol”) on a legal footing for product safety and metrology frameworks, whilst recognising the UK has left the European Union, as required at the end of the Transition Period. It does this by amending various pieces of product safety and metrology legislation, as it applies in Northern Ireland.

Explanations

What did any relevant EU law do before exit day?

- 2.2 Before exit day, the relevant EU law was intended to ensure that products were safe, compliant and accurate to use and that action could be taken in respect of unsafe or non-compliant products, including if necessary, removal from the market.
- 2.3 The Department has laid several EU Exit instruments in 2019 and 2020, firstly in preparation for a potential no deal UK exit from the EU and then to implement the obligations of the Withdrawal Agreement, including the Protocol. These include the *Product Regulations GB* and the *Product Regulations NI*.

Why is it being changed?

- 2.4 The *Product Regulations GB*, as far as is relevant to the current instrument, make provision for toys which are qualifying Northern Ireland goods, to have access to the market of Great Britain.
- 2.5 The *Product Regulations NI* amend existing product safety and metrology regulations so that they continue to implement EU law in Northern Ireland, whilst recognising that the UK has left the EU.
- 2.6 The purpose of this amending instrument is to correct errors and to clarify drafting in both of these earlier regulations.
- 2.7 Specifically, there is an erroneous reference to ‘regulated measuring instrument’ in the toys provisions of Schedule 3 of the *Product Regulations GB* which amend the Toys (Safety) Regulations 2011 (S.I. 2011/1881). This instrument corrects that reference.
- 2.8 Additionally, in its 31st Report of 2019-21, the Joint Committee on Statutory Instruments drew special attention to the *Product Regulations NI* on the grounds of:
 - a) Elucidation required for Schedule 6 (which amends the Cosmetic Products Enforcement Regulations 2013 (S.I. 2013/1475);
 - b) Defective drafting in Schedule 13 (which amends the Non-automatic Weighing Instruments Regulations 2016 (S.I. 2016/1152); and
 - c) Defective drafting in Schedule 14 (which amends the Measuring Instruments Regulations 2016 (S.I. 2016/1153).

What will it now do?

- 2.9 This instrument will bring in appropriate provisions to make sure that the amendments to the Toys (Safety) Regulations 2011, the Cosmetic Products Enforcement Regulations 2013, the Non-automatic Weighing Instruments Regulations 2016 and the Measuring Instruments Regulations 2016 are implemented effectively and as originally intended.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 In its 31st report of Session 2019-21, the Joint Committee on Statutory Instruments (JCSI) reported the *Product Regulations NI* for one instance of drafting “requiring elucidation” plus two instances of “defective drafting”. Specifically for:
 - a) Retention of references in Schedule 6 (cosmetic products) to the enforcement powers of enforcement authorities in England and Wales, where the definition of “enforcement authority” has been amended to exclude enforcement authorities in England and Wales, for the purposes of the Cosmetic Product Enforcement Regulations 2013, as they apply in Northern Ireland
 - b) Omitting a definition of “Union harmonisation legislation” in Schedules 13 and 14 (non-automatic weighing instruments and measuring instruments, respectively); and
 - c) Ineffective text substitutions in Schedule 14 (measuring instruments).
- 3.2 This instrument makes drafting improvements to clarify and correct these drafting issues. The procedure for free issues has been applied to this instrument and the

instrument is being issued free of charge to all known recipients of the *Product Regulations NI* (as well as the *Product Regulations GB*).

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 varies between its provisions.
- 4.2 Regulation 1 of this instrument extends to England and Wales and Scotland and Northern Ireland.
- 4.3 Regulation 2 extends to England and Wales and Scotland only.
- 4.4 Regulation 3 extends to Northern Ireland only.
- 4.5 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 For as long as the Protocol is in effect, EU product safety and metrology legislation will continue to apply in Northern Ireland after the end of the Transition Period. In order to meet this Protocol obligation, the Department laid several EU Exit regulations in 2020, including the *Product Regulations NI* and the *Product Regulations GB*.
- 6.2 Schedule 3 of the *Product Regulations GB* makes an incorrect reference in its amendment in relation to the Toys (Safety) Regulations 2011. The provision concerning access to the market of Great Britain for toys that are qualifying Northern Ireland goods contains one erroneous reference to ‘regulated measuring instrument’. This instrument will correct the text to read ‘toys’ instead.
- 6.3 The JCSI has identified that amendments in Schedule 6 to the *Product Regulations NI* to the Cosmetic Products Enforcement Regulations 2013 (“the 2013 Regulations”), do not remove references to the powers of the enforcement authorities in England and Wales. The amendments in Schedule 6 amend the 2013 Regulations so that they continue to properly be able to be relied on to enforce Regulation (EC) No. 1223/2009 on cosmetic products (“the EU Regulation”) in Northern Ireland, as required by the Protocol. Schedule 6 to the *Product Regulations NI* amends the 2013 Regulations by, amongst other things, making clear that only enforcement authorities in Northern Ireland are responsible for enforcing the EU Regulation. However, one regulation (regulation 20) refers to the powers of the enforcement authorities based in England and Wales, as well as Northern Ireland. The JCSI concluded that without amending regulation 20 the *Products Regulations NI* required elucidation. This instrument inserts amendments to regulation 20 of the 2013 Regulations to remove any references that are not required in respect of Northern Ireland.

- 6.4 The JCSI has also identified two instances where a term that continues to be referred to in the Non-automatic Weighing Instruments Regulations 2016 and the Measuring Instruments Regulations 2016 (“the underlying regulations”) has been omitted: the definition of “Union harmonisation legislation”, which continues to be used in the underlying regulations in one instance in each set of the underlying regulations. This instrument ensures a definition is included.
- 6.5 Finally the JCSI identified errors in the drafting in Schedule 14 to the *Products Regulations NI*, which amends the Measuring Instruments Regulations 2016, as they have effect in Northern Ireland. The drafting intent for all of the product safety regulations was to implement the Protocol by making clear that the ‘relevant market’ no longer includes Great Britain and refers only to Northern Ireland and EEA states. However, the drafting used does not work for the Measuring Instruments Regulations 2016 as the substitutions refer to text not present. This instrument will correct the text references in Schedule 14 so the amendment is implemented as originally intended.

7. Policy background

What is being done and why?

- 7.1 The instrument makes no changes to policy. It clarifies the drafting and corrects drafting deficiencies identified to ensure that the *Product Regulations NI* and the *Product Regulations GB* properly and clearly implement the original policy intent, which is to ensure that EU product safety legislation will continue to apply in Northern Ireland after the end of the Transition Period and to make provision for qualifying Northern Ireland goods on the market of Great Britain.

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 and paragraph 21 of Schedule 7 to, 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 correcting minor errors and clarifying existing legislation.
- 10.2 There has been engagement with the relevant Northern Ireland Departments on this instrument.

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 placing manufactured goods on the market in Northern Ireland from the 1 January 2021 under the terms of the Protocol was published on 10 November 2020 and is available on the GOV.UK website. Further guidance has also

been published on the details for each element of the product safety and metrology regime.

- 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.

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 Christina Duho at the Department for Business, Energy and Industrial Strategy Telephone: 0300 068 8205 or email: christina.duho2@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.