

EXPLANATORY MEMORANDUM TO
THE RADIO EQUIPMENT (AMENDMENT) (NORTHERN IRELAND)
REGULATIONS 2023

2023 No. 328

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, and Trade and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 The purpose of the instrument is to give effect to Commission Delegated Regulation (EU) 2019/320 in Northern Ireland. Regulation (EU) 2019/320, issued by the Commission under Article 3(3) of the Radio Equipment Directive, sets out an additional requirement for all smartphones placed on the EU market, requiring them to be capable of transmitting caller location in calls to emergency services. The Regulation was adopted on 12 December 2018 and applies in all EU Member States from 17 March 2022. Under the terms of the Windsor Framework¹, it also applies in Northern Ireland.
- 2.2 In order to give effect to this new requirement, this instrument implements the relevant Article of the Directive with the effect of adding to the essential requirements set out in Regulation 6 of the UK's Radio Equipment Regulations 2017 (S.I. 2017/1206), as they apply in Northern Ireland. Additionally, as industry compliance is demonstrated through a conformity assessment process, this instrument updates Regulation 41 of the Radio Equipment Regulations 2017, as it applies in Northern Ireland, to provide for the relevant conformity assessment procedures applicable to the new essential requirement.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction which the instrument forms part of the law of) is Northern Ireland. Provisions extend to Northern Ireland.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Northern Ireland.

¹ The Windsor Framework is a reference to the Northern Ireland Protocol, which is to be amended by a Joint Committee Decision, expected to be effective in March 2023.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under-Secretary of State for Department for Business and Trade Kevin Hollinrake MP has made the following statement regarding Human Rights:
- “In my view the provisions of the Radio Equipment (Amendment) (Northern Ireland) Regulations 2023 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument amends the Radio Equipment Regulations 2017 (S.I. 2017/1206) as they apply in Northern Ireland. The amendments give effect to Commission Delegated Regulation (EU) 2019/320 issued under Article 3(3)(g) of the Radio Equipment Directive (2014/53/EU) which allows the Commission to impose additional essential requirements (ESRs) on manufacturers of radio equipment. At the time of drafting the 2017 Regulations, no delegated acts had been issued under Article 3(3) and so no provision was made for it in the 2017 Regulations. However, the Commission has now issued Delegated Regulation (EU) 2019/320 for smart phones under Article 3(3)(g). Accordingly, that Article of the Directive now needs to be implemented to ensure that the requirement becomes a legally enforceable obligation in domestic law. Accordingly, regulation 6, which sets out the ESRs, is amended by this instrument to give effect to the additions to the ESRs.
- 6.2 Where additional ESRs apply, Article 17 of the Directive sets out the applicable conformity assessment procedure to be used. Article 17 was implemented in the UK by regulation 41 of the 2017 Regulations and now needs to be amended in order to reflect the conformity procedures that are to be applied to the new additional essential requirement. This instrument therefore also amends regulation 41.
- 6.3 The amendments apply to NI which remains subject to EU law and the Directive by virtue of the Windsor Framework. They are not relevant for the remainder of the UK since it has left the EU.

7. Policy background

What is being done and why?

- 7.1 Commission Delegated Regulation (EU) 2019/320 is an EU Regulation which requires that smartphones placed on the EU market from 17 March 2022 must be able to transmit their location data in emergency calls. The Delegated Regulation issued by the Commission under Article 3 of the Radio Equipment Directive, applies in all EU Member States and, under the terms of the Windsor Framework, applies in Northern Ireland. Regulation (EU) 2019/320 does not apply in Great Britain.
- 7.2 The UK’s Radio Equipment Regulations 2017 implemented the Radio Equipment Directive into UK law and have been amended to reflect that the UK is no longer part of the EU. This Instrument amends the Radio Equipment Regulations, as they apply in Northern Ireland, in order to enable Regulation (EU) 2019/320 to be legally enforced in Northern Ireland.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.3 The UK’s Radio Equipment Regulations 2017 implemented the Radio Equipment Directive 2014/53/EU into UK law and have been amended to reflect that the UK is

no longer part of the EU. The 2017 Regulations regulate the safety and electromagnetic compatibility of radio equipment and promote protection of the radio spectrum. The Radio Equipment Regulations 2017 apply across the UK, but some of their provisions apply differently in Northern Ireland because it remains subject to EU law for radio equipment under the terms of the Windsor Framework.

Why is it being changed?

- 7.4 The purpose of the change is to give effect to EU Commission Delegated Regulation (EU) 2019/320 in Northern Ireland. The Delegated Regulation (EU) 2019/320 sets out an additional requirement for all smartphones placed on the EU market, requiring them to be capable of transmitting caller location in calls to emergency services. The Regulation applies in all EU Member States from 17 March 2022, and under the terms of the Windsor Framework, it also applies in Northern Ireland.

What will it now do?

- 7.5 This Instrument implements the additional requirement set out in Regulation (EU) 2019/320 in Northern Ireland and enables it to be legally enforced. This SI widens the scope of an existing criminal offence. It is already an offence under the Radio Equipment Regulations 2017 not to comply with the essential safety requirements. By adding to the requirements, the scope of that offence is widened.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is being made using the power in section 8C of the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 No consolidation is needed.

10. Consultation outcome

- 10.1 The Government did not undertake a public consultation given that this instrument's provisions are limited to making amendments for the implementation of a Windsor Framework obligation and ensuring that Northern Ireland continues to implement EU derived product safety requirements for these manufactured goods.
- 10.2 The Department has undertaken engagement with a cross-representation of stakeholders, including other government departments and the Northern Ireland Office.

11. Guidance

- 11.1 The Department for Business and Trade has produced guidance on the Radio Equipment Regulations 2017, detailing the various obligations on each of the economic operators, as well as the enforcement and market surveillance provisions. This guidance has been updated to include information on the requirements of Commission Delegated Regulation (EU) 2019/320 for Northern Ireland. The guidance is available at: <https://www.gov.uk/government/publications/radio-equipment-regulations-2017/radio-equipment-regulations-2017-northern-ireland>.

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 measures resulting from the Windsor Framework are out of scope of assessment. The relevant requirements of the Windsor Framework have already been given effect in legislation through the European Union (Withdrawal Agreement) Act 2020, which adds provisions and powers to the European Union (Withdrawal) Act 2018.

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 because there is no significant impact on business.
- 13.3 An Impact Assessment has not been prepared for this instrument because measures resulting from the Windsor Framework are out of scope of assessment. The relevant requirements of the Windsor Framework have already been given effect in legislation through the European Union (Withdrawal Agreement) Act 2020, which adds provisions and powers to the European Union (Withdrawal) Act 2018.

14. Monitoring & review

- 14.1 The Department does not intend to monitor this instrument.
- 14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 Stuart Barthropp at the Department for Business and Trade. Telephone: 0207 215 1898 or email: stuart.barthropp@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Tony Thomas, Deputy Director for Product Safety Policy at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Kevin Hollinrake MP, Parliamentary Under-Secretary of State for Department for Business and Trade, can confirm that this Explanatory Memorandum meets the required standard.